federal register

MONDAY, JULY 7, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 130

Pages 28445–28599

PART I

NOTE: The issue number on the issue for July 3, 1975 is incorrect. It should appear as Number 129.

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

(Continued inside)

July 7, 1975—Pages 28445–28599

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

COMMODITY FUTURES TRADING COMMISSION—Large trader reporting requirements; extension of newly regulated commodities..... 23994; 6–4–75

DOT/FAA—Air cargo pickup and delivery zones; filing of tariffs; application for authority to file; editorial amendment. 25585; 6–17–75

HEW/FDA—Cosmetic labeling; hypoallergenic products..... 24442; 6–6–75

SSA—Federal health insurance for the aged and disabled; institutional planning as a condition of participation in Medicare..... 24324; 6–5–75

—— Federal old-age, survivors, and disability insurance and Federal health insurance for the aged and disabled; entitlement to hospital insurance benefits..... 24357; 6–6–75

TREASURY/CUSTOMS SERVICE—General provisions; Amarillo, Tex.; Port of entry 24356; 6–6–75

List of Public Laws

This is a listing of public bills enacted by Congress and approved by the President, together with the law number, the date of approval, and the U.S. Statute citation. The list is kept current in each issue of the Federal Register and copies of the laws may be obtained from the U.S. Government Printing Office.

H.R. 8109..... Pub. 94–48 Social Security Act, Amendment (July 1, 1975; 89 Stat. 247)

ATTENTION: Questions, corrections, or requests for information regarding the contents of this issue only may be made by dialing 202–523–5284. For information on obtaining extra copies, please call 202–523–5240. To obtain advance information from recorded highlights of selected documents to appear in the next issue, dial 202–523–5022.

federal register

Phone 523–5240

Area Code 202

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $45 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

contents

list of cfr parts affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

5 CFR
213 (4 documents) 28445
307 28445

7 CFR
908 28460
910 28461
911 28462
916 28462
1822 28463
PROPOSED RULES:
1046 28465

10 CFR
205 28446
211 (2 documents) 28446
212 (2 documents) 28447, 28448
PROPOSED RULES:
205 28481
206 28481
123 (2 documents) 28481, 28487

11 CFR
Ch. II 28578
PROPOSED RULES:
Ch. II 28579

12 CFR
400 28449

14 CFR
288 28450
PROPOSED RULES:
221 28489

16 CFR
PROPOSED RULES:
257 28489

21 CFR
1 28582
701 28451
PROPOSED RULES:
310 28587

24 CFR
17 28597
888 28451

29 CFR
PROPOSED RULES:
1952 28472

32 CFR
1712 28597

33 CFR
3 28451

34 CFR
PROPOSED RULES:
Ch. II 28495

41 CFR
PROPOSED RULES:
60–12 28477
60–14 28472

45 CFR
83 28572

46 CFR
538 28452
PROPOSED RULES:
547 28489

47 CFR
0 28454
1 28454
73 28457
76 28457

49 CFR
571 28457

50 CFR
21 28459
PROPOSED RULES:
216 28469

CUMULATIVE LIST OF PARTS AFFECTED—JULY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during July.

1 CFR

305 ... 27925
310 ... 27925

3 CFR

PROCLAMATIONS:

4381 ... 27637

EXECUTIVE ORDERS:

2909 (Revoked by PLO 5510) ... 27939
5277 (Revoked by PLO 5507) ... 27659
5481 (Revoked by PLO 5507) ... 27659

4 CFR

54 ... 27929

5 CFR

213 ... 27639, 27640, 27929, 28047, 28445
307 ... 28445
551 ... 27640
731 ... 28047

7 CFR

246 ... 27930
780 ... 27641
908 ... 28460
910 ... 28461
911 ... 28462
915 ... 28048
916 ... 28462
917 ... 27930
930 ... 27931
1822 ... 28463
1843 ... 27931
1964 ... 27641
1131 ... 27642

PROPOSED RULES:

728 ... 28093
775 ... 28093
915 ... 28090
916 ... 28090
958 ... 28091
980 ... 28091
989 ... 27691
1046 ... 28465
1201 ... 28092, 28093
1421 ... 28094
1822 ... 28094
1464 ... 27691

9 CFR

83 ... 27642
97 ... 27643

10 CFR

205 ... 28446
211 ... 28446
212 ... 28447, 28448
303 ... 28420
309 ... 28420

PROPOSED RULES:

205 ... 28481
206 ... 28481
213 ... 28481, 28487

11 CFR

Ch. II ... 28578

PROPOSED RULES:

Ch. II ... 28579

12 CFR

308 ... 28048
339 ... 27931
400 ... 28449

PROPOSED RULES:

329 ... 28099, 28100
546 ... 27953
563 ... 27954

14 CFR

39 ... 27643, 27644, 28075
71 ... 28076, 28077
75 ... 27644, 28077
211 ... 28077
217 ... 28078
288 ... 28078, 28450
296 ... 28079
297 ... 28087
399 ... 28087

39 ... 28096
75 ... 28096, 28097
221 ... 28489

16 CFR

13 ... 27932, 28050
302 ... 27932
1031 ... 27934

PROPOSED RULES:

257 ... 28489

17 CFR

270 ... 27644
275 ... 27644

18 CFR

3 ... 27645
260 ... 27645

19 CFR

1 ... 28582

20 CFR

401 ... 27648
405 ... 28016, 28052
422 ... 27648

PROPOSED RULES:

404 ... 28095
405 ... 27782
416 ... 28095

21 CFR

1 ... 28582
431 ... 28052
510 ... 27651
558 ... 27651
701 ... 28451
1401 ... 27821

PROPOSED RULES:

310 ... 27796, 28587
1020 ... 28095

23 CFR

230 ... 28053

24 CFR

17 ... 28597
888 ... 28451
1914 ... 28061
1915 ... 27651

25 CFR

12 ... 28026
153 ... 28039

26 CFR

1 ... 27943

PROPOSED RULES:

1 ... 27943, 28101
11 ... 28101

29 CFR

727 ... 28064
1952 ... 27655, 28472

PROPOSED RULES:

1902 ... 27946
1907 ... 27691

32 CFR

641 ... 27936
1712 ... 28597

33 CFR

3 ... 28451
127 ... 27939

34 CFR

PROPOSED RULES:

Ch. II ... 28495

36 CFR

PROPOSED RULES:

2 ... 28088

40 CFR

52 ... 28064
85 ... 28066
162 ... 28242
180 ... 28065

PROPOSED RULES:

52 ... 28097, 28098

41 CFR

1–3 ... 27655
1–9 ... 28067
9–4 ... 28068
101–11 ... 27655

PROPOSED RULES:

60–12 ... 28477
60–14 ... 28472

42 CFR

2 ... 27802

43 CFR

20 ... 28288
430 ... 27658

PUBLIC LAND ORDERS:

1063, Revoked by PLO 5507 ... 27659
3836, Amended by PLO 5506 ... 27659
5150, Revoked in part by PLO 5506 ... 27659
5180, Revoked in part by PLO 5509 ... 27659
5497, Corrected by PLO 5508 ... 27659
5504 ... 27659
5506 ... 27659
5507 ... 27659
5508 ... 27659
5509 ... 27659
5510 ... 27939

45 CFR

83 28572
206 27659
250 28070
1061 27661
1068 ..... 27665, 27667

46 CFR

502 27671
538 28452

PROPOSED RULES:

547 28489

47 CFR

0 28454
1 28454
73 ..... 27671, 27939, 28457
76 28457

PROPOSED RULES:

73 28098

49 CFR

172 27939
173 27939
174 27939
177 27939
571 28457
575 ..... 28071, 28074
1033 27939–27941
1102 27941

PROPOSED RULES:

571 28097

50 CFR

21 28459

PROPOSED RULES:

20 27943
216 28469

FEDERAL REGISTER PAGES AND DATES—JULY

Pages	*Date*
27637–27924	1
27925–28045	2
28046–28443	3
28445–28599	7

rules and regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of State

Section 213.3304 is amended to show that one position of Secretary to the Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs is excepted under Schedule C.

Effective July 7, 1975. § 213.3304(d) is added as set out below:

§ 213.3304 Department of State.

* * * * *

(d) *Bureau of Oceans and International Environmental and Scientific Affairs.*

(1) One Secretary to the Assistant Secretary.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75–17445 Filed 7–3–75;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to show that one position of Special Assistant to the Director of Defense Research and Engineering is excepted under Schedule C.

Effective July 7, 1975. § 213.3306(a) (67) is added as set out below:

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(67) One Special Assistant to the Director of Defense Research and Engineering.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75–17443 Filed 7–3–75;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3315 is amended to show that one additional position of Special Assistant to the Director, Women's Bureau, is excepted under Schedule C.

Effective July 7, 1975. § 213.3315(f) (2) is revised as set out below:

§ 213.3315 Department of Labor.

* * * * *

(f) *Women's Bureau.* * * *

(2) Three Special Assistants to the Director.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75–17444 Filed 7–3–75;8:45 am]

PART 213—EXCEPTED SERVICE

United States Arms Control and Disarmament Agency

Subpart C of Part 213 is amended to show that under the provisions of § 213.3301b, one position of Private Secretary to the Deputy Assistant Director, Economic Affairs Bureau and one position of Staff Assistant to the Special Assistant to the Director are no longer excepted under Schedule C.

Effective July 7, 1975. §§ 213.3364 (g) and (h) are revoked.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75–17446 Filed 7–3–75;8:45 am]

PART 307—VETERANS READJUSTMENT APPOINTMENTS

Part 307 is amended to implement the provision of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (Pub. L. 93–508), which extends certain veterans' eligibility for a Veterans Readjustment Appointment by the length of time such veteran is enrolled in a program of education on more than a half-time basis, plus a minimum of six additional months after the veteran first ceases to be so enrolled. No Veterans Readjustment Appointment may be made under the law after June 30, 1978. Since this amendment constitutes an interpretative rule under 5 U.S.C. § 553(b) this regulation is being promulgated without prior publication of a notice of proposed rulemaking.

Effective July 7, 1975, the headnote of Part 307 is amended to delete the reference to transitional appointments and §§ 307.101(c), 307.102(b), and 307.105 and the authority citation are revised as set out below:

§ 307.101 Definitions.

* * * * *

(c) "Veterans readjustment appointment" is an excepted appointment made after April 8, 1970, under this Part to a position otherwise in the competitive service of a veteran who served during the Vietnam era.

* * * * *

§ 307.102 Basic eligibility.

* * * * *

(b) A veteran may be given a veterans readjustment appointment only during the following periods:

(1) Within 1 year after either his separation from the armed forces or his release from hospitalization for treatment immediately following separation from the armed forces, except that in the case of appointments made prior to June 30, 1978, the 1-year period of eligibility is extended by the length of time a veteran is continuously enrolled in a program of education (as defined in 38 U.S.C. 1652) on more than a half-time basis (as defined in 38 U.S.C. 1788), including customary periods of vacation and permissible absences, plus a minimum of six additional months after the veteran ceases to be so enrolled.

(2) Within 1 year after involuntary separation without cause from a veterans readjustment appointment.

NOTE: No veterans readjustment appointment may be made under the authority in law after June 30, 1978.

§ 307.105 Conditions of employment.

An employee holding a veterans readjustment appointment serves subject to satisfactory performance of assigned duties and satisfactory participation in the training or educational program under which he was appointed. The agency shall separate an employee who does not meet these conditions, following the procedures in Part 752 of this chapter if the employee has completed 1 year of current continuous employment.

(5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp. p. 912; 38 U.S.C. 2014.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.75–17447 Filed 7–3–75;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Passenger Transportation Services; Filing Procedures for Air Taxi/Commercial Operators; Miscellaneous Amendments

On April 17, 1975, the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (40 FR 17600, April 21, 1975), proposing to amend FEA regulations to include air facilities and services in the definition of "Passenger transportation services", to clarify the filing procedures for air taxi/commercial operators and to delete inappropriate references to the term "public air carriers".

Two requests to make oral presentations at the public hearing were received by FEA before 4:30 p.m., e.d.t., May 13, 1975. One of the requests was subsequently withdrawn. Since the other request was contingent upon the desire of other parties to participate in a public hearing, the hearing was subsequently canceled by notice issued May 16, 1975 (40 FR 22146, Mal 21, 1975).

Written comments were invited through May 16, 1975. FEA received nine timely comments and one late comment. All comments directly addressing the proposed amendments were in favor of the proposal, and no valid objections were presented. Therefore the FEA has determined that the amendments should be adopted.

The effect of the inclusion of air facilities and services in the definition of "Passenger transportation services" in § 211.51 is to assure firms providing air passenger transportation services access to refined petroleum products other than aviation fuels on the same basis as firms providing surface transportation for passengers. This amendment would prevent, for example, any potential disadvantage to air carriers carrying passengers in obtaining lubricants and greases allocated under Subpart K of Part 211 by according them an allocation level of one hundred percent of current requirements, subject to an allocation fraction, rather than an allocation level expressed in terms of a percent of base period use. This amendment will not affect the current method of allocating aviation fuels and is intended only to provide the same allocation level for surface and air carriers for those refined products which are provided with an allocation level for "Passenger transportation services".

In addition, § 205.13(a)(5) is amended to remove an inconsistency in the filing procedures for air taxi/commercial operations and to delete the reference to "public air carriers". The amendment exempts air taxi/commercial operators from the general requirement of § 205.13 (a)(5) that civil air carriers file all documents with the FEA National Office. This eliminates an inconsistency with § 211.147 which requires air taxi/commercial operators to file with the appropriate FEA Regional Office. The amendment also deletes the reference in § 205.13(a)(5) to "public air carriers" since that term is not defined or used elsewhere in FEA regulations.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended by Pub. L. 93–511; Federal Energy Administration Act of 1974, Pub. L. 93–275; E.O. 11790, 39 FR 23185)

In consideration of the foregoing, Parts 205 and 211, Chapter II of Title 10, Code of Federal Regulations, are amended as set forth below, effective July 1, 1975.

Issued in Washington, D.C., July 1, 1975.

DAVID G. WILSON,
Acting General Counsel.

1. Section 205.13 is amended by revising paragraph (a)(5) to read as follows:

§ 205.13 Where to file.

(a) * * *

(5) The allocation and pricing of aviation fuel pursuant to Subpart H of Part 211 and Part 212 of this Chapter, filed by civil air carriers (except air taxi/commercial operators);

* * * * *

2. Section 211.51 is amended by revising the definition of "Passenger transportation services" to read as follows:

§ 211.51 General definitions.

* * * * *

"Passenger transportation services" means (a) air and surface facilities and services, including water and rail, for carrying passengers whether publicly or privately owned, including tour and charter buses and taxicabs which serve the general public; and (b) bus transportation of pupils to and from school and school sponsored activities.

* * * * *

[FR Doc.75–17512 Filed 7–1–75;3:24 pm]

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

Adjustments to Crude Oil Costs Under Old Oil Allocation Program

The Federal Energy Administration issued an amendment to 10 CFR 211.67 (1)(1)(ii) on March 21, 1975 (40 FR 13302), which was made effective immediately, which permitted revenues from sales of entitlements under the old oil allocation program to be passed on by refiners to firms which have crude oil refined under processing agreements. An opportunity for comment was provided subsequent to issuance, and the further amendment issued today reflects the comments received.

The comments generally supported the amendment as issued. There was no support expressed for making mandatory the provision which now permits, but does not require, a refiner to pass on to a non-refiner the sales revenues from entitlements issued for crude oil processed for that non-refiner under a processing agreement. Some support was expressed for a provision to require a non-refiner to bear part or all of the costs of any entitlements required to be purchased by a refiner for old crude oil refined for that non-refiner under a processing agreement. However, the comments in general expressed the view that such a provision would be unduly burdensome and difficult to administer. Therefore, the FEA has determined that neither of these possible modifications to the amendment should be adopted.

However, the comments raised the question of what the regulation should provide in circumstances where a refiner is a buyer of entitlements, but has its obligation to purchase entitlements reduced because of crude oil it refines for a non-refiner under a processing agreement. In keeping with the rationale for the March 21 amendment, a refiner should also be able to pass on these benefits. Also, such a provision would avoid providing an incentive for non-refiners to have their crude oil processed only by refiners that are sellers of entitlements, and thus would help to prevent disruptions in the processing sector of the industry.

Therefore, the FEA hereby amends, effective immediately, the provision of the Mandatory Petroleum Allocation Regulations which prescribes how the cost of entitlements purchased under the old oil allocation program are to be reflected in adjustments to crude oil costs (10 CFR 211.67(1)(1)(i)). This amendment corresponds to the March 21 amendment (10 CFR 211.67(1)(1)(ii)), which applies when refiners are sellers of entitlements, and will permit refiners that are buyers of entitlements to pass on the benefit of reduced entitlement purchase obligations to the extent that entitlements issued for crude oil processed for a non-refiner reduce the refiner's total obligation to purchase entitlements.

As noted, this amendment is being made effective immediately because it is merely an extension and refinement of the emergency clarifying amendment issued March 21, 1975 which is consistent with the original amendment. After that rule was promulgated, a hearing was scheduled and written comments were solicited. In response to that amendment, several written comments were received, although the public hearing was cancelled because there were no requests to participate. Those comments have been taken into account in the promulgation of the amendment made effective today. The notice and hearing requirements of subsections 7(i)(1)(B) and (C) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275) have therefore already been satisfied and a further opportunity for the presentation of oral and written views is unnecessary. In addition, because the present amendment is not a significant departure from the amendment in effect, its impact on the Nation's economy and large numbers of individuals and businesses is not likely to

be substantial. The emergency clarifying amendment issued on March 21, 1975 was sent to the Administrator of the Environmental Protection Agency for his comments, and the Administrator did not have any comments on the amendment. Because this amendment is merely an extension of the previous one, it has not been sent to the Administrator of the Environmental Protection Agency on a finding that section 7(c)(2) of the Federal Energy Administration Act of 1974 has been complied with.

(Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. 93–159, as amended by Pub. L. 93–511; Federal Energy Administration Act of 1974, Pub. L. 93–275; E.O. 11790 (39 FR 23185))

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., July 1, 1975.

DAVID G. WILSON,
Acting General Counsel.

1. Section 211.67(l)(1)(i) is revised to read as follows:

§ 211.67 Allocation of old oil.

* * * * *

(l) *Adjustments to crude oil costs.*—(1) *Computations.*—(i) *Entitlements purchased.* The cost of entitlements purchased in a particular month pursuant to this section by refiners shall be added to the cost of crude oil purchased or landed in that month (which is the period "t" (the month of measurement), for purposes of calculating the increased cost to be applied to product prices in the following month under the "At" factor of the general formulae of § 212.82(c)(2) of this chapter); *provided,* That, to the extent that the obligation of a refiner to purchase entitlements is reduced by volumes of crude oil processed by a refiner for a firm other than that refiner pursuant to a processing agreement, and that the monetary value of that reduced purchase obligation is used to reduce the processing fee otherwise payable by that firm under the processing agreement, or is otherwise passed on to that firm, such monetary value may also be added by that refiner to its cost of crude petroleum purchased or landed in that month, but shall be subtracted from the cost of crude oil purchased or landed in that month by the firm to which the monetary value of the reduced purchase obligation is passed on pursuant to this paragraph.

* * * * *

[FR Doc.75–17511 Filed 7–1–75;3:24 pm]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Retroactive Invoicing for Domestic Crude Petroleum

On March 23, 1975, the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (40 FR 13522, March 27, 1975) with respect to the price regulations applicable to first sales of domestic crude petroleum. FEA proposed placing certain limitations on retroactive invoicing for new and released domestic crude petroleum, to be effective, if adopted, as of the date the notice was issued, March 23, 1975.

Forty-seven written comments were received in response to that notice, including sixteen late comments. A public hearing was held on April 15, 1975, at which three persons made oral presentations. All presentations made and all comments submitted have been considered in the formulation of the final regulation being adopted today.

The regulation issued today is largely unchanged in effect from the one proposed on March 23, 1975. However, several aspects of the final regulation issued today reflect refinements suggested by the comments.

The definitions of "new crude petroleum" and "released crude petroleum" have been changed from those proposed, to permit the recertification as new and released crude oil of volumes of crude oil initially certified as old crude oil, where such recertification is required or permitted by FEA order, interpretation, or ruling. The proposed amendment would have operated to classify as old oil all volumes of crude oil, other than stripper well crude oil, which were not certified as new and released oil within the two-month period following the month of their production and sale. The modification to that proposal takes into account and explicitly provides for the possibility that certain volumes of crude oil treated as old oil may subsequently be eligible for treatment as new or released crude oil by virtue of a later FEA order, interpretation or ruling. Thus, the regulation issued today expressly permits a recertification in such circumstances after the expiration of the two-month certification period. It is not anticipated that significant volumes will be affected, but inclusion of this provision was determined to be required by considerations of administrative fairness.

Some of the comments reflected a misunderstanding as to the effect of this change in the definitions of new and released domestic crude petroleum. Because FEA has decided to adopt this regulation largely as proposed, it is effective as of March 23, 1975. Therefore, any volumes of crude oil, other than stripper well crude oil, produced and sold prior to January 1975 and not certified as new or released crude oil prior to March 23, 1975, are volumes of old crude oil and must be invoiced at the ceiling price. All volumes produced and sold in January 1975 must have been certified by the end of March 1975 or else have failed to qualify as new or released crude petroleum.

The second change from the amendment proposed on March 23, 1975 is in the definition of "retroactive increase in price." Although a significant amount of support was expressed for the definition as initially proposed, certain drawbacks to the language used to effectuate the proposal were identified by the comments. The fact that the use of postings has declined since the inception of the price regulations, that some purchasers from a particular field have been paying a price lower than the highest posted price, and that some prices are set by contract which may bear no relation to the posted price all contribute to the possibility that the amendment in the form proposed might not fully achieve its intended result. Therefore the FEA has determined that this definition should not relate exclusively to postings rather than to prices actually charged in transactions between the purchaser and the seller, since purchasers that were paying less than posted prices would otherwise continue to be subject to retroactive price increases.

The amendment issued today contains two definitions for "retroactive increase in price," one to be effective for the period of March 23, 1975, through June 30, 1975, and the other to be effective on July 1, 1975, and thereafter. The first definition is as proposed in the March 23 rulemaking. The second definition is modified to specify, in lieu of the highest posted price, the highest price prevailing for that grade of crude petroleum in first sales between the producer and the purchaser within the calendar month. A price charged or offered in excess of the highest price prevailing between the producer and purchaser during the calendar month in which the crude oil was produced and sold is considered to be a retroactive increase in price. The calendar month in which the crude oil was produced and sold was chosen for the relevant period in which to measure the highest prevailing price, in an effort to facilitate administration and enforcement of the regulation. It should simplify accounting for crude oil sales by producers and still provide purchasers with an accurate cost figure to be used in computing month of measurement costs.

The final modification in the proposal, which is effective prospectively only, is a modification of § 212.131 relating to certification procedures. Section 212.131(a)(2) is amended to provide that a seller of domestic crude petroleum, other than a producer, must certify volumes of old crude petroleum sold as soon as practicable after receipt of the certifications from its seller, but in no event more than thirty days after that time. A new § 212.131(d) is also added to make explicit that certifications are effective upon receipt by the purchaser, in order to avoid future disputes as to the effectiveness of certifications.

As provided in the notice of proposed rulemaking issued on March 23, 1975, the regulations issued today, with the exception of the amendments to § 212.131, are effective as of that date. The amendments to § 212.131 shall be effective July 1, 1975.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended by Pub. L. 93–511; Federal Energy Administration Act of 1974, Pub. L. 93–275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, §§ 212.72 and 212.74 to

be effective March 23, 1975 and § 212.131 to be effective July 1, 1975.

Issued in Washington, D.C., July 1, 1975.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

1. Section 212.72 is amended by adding a sentence at the end of the definition of "new crude petroleum", by adding a sentence at the end of the definition of "released crude petroleum", and by adding, in the appropriate alphabetical order, a definition of "Retroactive increase in price" as follows:

§ 212.72 Definitions.

* * * * *

* * * "New crude petroleum" shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude petroleum is produced and sold, except where such recertification is required or permitted by FEA order, interpretation, or ruling.

* * * * *

* * * "Released crude petroleum" shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude petroleum is produced and sold, except where such recertification is required or permitted by FEA order, interpretation, or ruling.

* * * * *

"Retroactive increase in price" means, prior to July 1, 1975, any price charged or offered in excess of the highest posted price prevailing at 6:00 a.m., local time, on the date the domestic crude petroleum was sold, for that grade of crude petroleum at that field, or if there are not posted prices in that field, the related price for that grade of domestic crude petroleum which is most similar in kind and quality at the nearest field for which prices are posted. "Retroactive increase in price" means, effective July 1, 1975, any price charged or offered after the close of the calendar month in excess of the highest price prevailing for that grade of crude petroleum, in first sales between the producer and the purchaser of the domestic crude petroleum, during the calendar month in which it was produced and sold.

* * * * *

2. Section 212.74 is revised to read as follows:

§ 212.74 New and released crude petroleum.

Notwithstanding the provisions of § 212.73(a), a producer of crude petroleum may sell in each month, without respect to the ceiling price, the new crude petroleum and the released crude petroleum produced and sold from a property in that month; *provided,* that, no producer may charge or accept a retroactive increase in price for new crude petroleum and released crude petroleum as defined in § 212.72 of this Part.

3. Section 212.131 is amended by adding a sentence at the end of paragraph (a)(2) to read as follows:

§ 212.131 Certification of domestic crude petroleum sales.

(a) * * *

(2) * * * Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude petroleum is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude petroleum.

* * * * *

4. Section 212.131 is amended by adding a new paragraph (d) to read as follows:

§ 212.131 Certification of domestic crude petroleum sales.

* * * * *

(d) All certifications required by this paragraph shall be in writing, either upon an invoice or billing or by separate instrument, and shall be effective only when delivered to and received by the purchaser of domestic crude petroleum.

[FR Doc.75-17514 Filed 7-1-75;3:24 pm]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Corrective Amendment to Allocated Crude Pricing Rule

The Federal Energy Administration hereby amends, effective immediately, 10 CFR 212.94(b) to correct an inadvertent error contained in that paragraph. Amendment is also made to the numbering in that paragraph, which was previously in error.

A basic function of the FEA Mandatory Petroleum Price Regulations is to provide a method by which the maximum lawful prices that may be charged in sales of covered products are to be computed. The various price rules applicable to sales by various types of entities therefore generally speak in terms of maximum prices.

It has recently come to FEA's attention that the only price rule which does not explicitly establish such a maximum price (i.e., a price which may not be exceeded) is the price rule for sales of allocated crude oil found in § 212.94(b). That section reads in part: "* * * the price at which crude oil shall be sold when required in § 211.65 of Part 211 of this chapter during each month shall be * * * the weighted average price of all crude oil delivered to a refiner-seller in that month * * *" plus a handling fee and other specifically authorized adjustments. The language in this section differs from that appearing in the other price rules in that it does not explicitly establish a maximum price, but rather, requires sales to be made at the price determined pursuant to the regulation. However, it has always been the intention of the FEA that this price rule function in the same manner as the other price rules, and set a maximum price which could not be exceeded rather than a price which is required to be charged.

By way of comparison, the producer ceiling price rule of § 212.73(a) provides in relevant part that "* * * no producer may charge a price higher than the ceiling price * * *" The refiner price rule of § 212.82(a) states: "A refiner may not charge to any class of purchaser a price for a covered product in excess of the base price of that covered product * * *". The price rule for resellers and retailers found in § 212.93(a) provides: "A seller may not charge a price for any item subject to this subpart which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects on a dollar-for-dollar basis, increased costs of the item." All of these provisions explicitly establish a maximum price which may not be exceeded, but do not require that price to be charged.

In order to conform the price rule for sales of allocated crude oil to the same general approach as the other price rules, which specify maximum but not required selling prices, the FEA hereby amends, effective immediately, the provision of the Mandatory Petroleum Price Regulations which prescribes the pricing mechanism for sales of allocated crude oil (10 CFR § 212.94(b)). This amendment simply substitutes the words "shall not exceed" for the words "shall be", and thereby corrects the language of that section to conform it to the historical FEA intent and to the other price rules. Since this amendment is only interpretive in nature, no refiner-seller will be considered to have been in violation of the regulations for sales made at a price below the price established by § 212.94(b) prior to this amendment.

Because this amendment is only interpretive in nature and is intended only to correct an inadvertent error in the regulations, the Federal Energy Administration finds that good cause exists to issue this amendment immediately, without notice, opportunity for comment, or delay in the effective date of the amendment. As this amendment will not affect the quality of the environment, it is also not necessary to submit this amendment to the Administrator of the Environmental Protection Agency for comments.

(Emergency Petroleum Allocation Act of 1973, as amended Pub. L. 93-159, as amended by Pub. L. 93-511; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., June , 1975.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

1. Section 212.94(b) is revised to read as follows:

§ 212.94 Allocated crude pricing.

* * * * *

(b) *Rule.* Notwithstanding the general rules described in this subpart, the price at which crude oil shall be sold when required in § 211.65 of Part 211 of this chapter during each month shall not exceed in Districts I–IV the weighted average price of all crude oil delivered to a refiner-seller in that month for those Districts, and in District V, the weighted average price of all crude oil delivered to a refiner-seller in that month for that District, plus, in all Districts, a handling fee of 30 cents per barrel, any transportation adjustment as specified in paragraph (b)(1) of this section and any gravity adjustment as specified in paragraph (b)(2) of this section. Each refiner-seller making such a sale shall calculate its price under this section and shall maintain records, which shall be made available to the FEA upon request, listing the volumes and delivered prices of all crude oil delivered to its refineries during each month.

(1) Actual additional transportation expenses incurred to move the crude oil to the refiner-buyer's refinery shall be paid by the refiner-buyer. Actual transportation expenses saved as a result of moving the offered crude oil directly to the refiner-buyer's refinery shall be deducted from the selling price, if customarily included in such price.

(2) The price adjustment for gravity differential of crude oil offered for sale under § 211.65 of this chapter in Districts I–IV shall be the weighted average price for those Districts calculated under paragraph (b) of this section plus or minus 2 cents per barrel per °API that the crude oil being offered for sale under § 211.65 of this chapter is above or below the weighted average °API of estimated runs of all crude oil for the forthcoming calendar quarter for the refiner-seller in Districts I–IV, and, in District V, shall be the weighted average price for that District calculated under paragraph (b) of this section plus or minus 5 cents per barrel per °API that the crude oil being offered for sale under § 211.65 of this chapter is above or below the weighted average °API of estimated runs of all crude oil for the forthcoming calendar quarter for the refiner-seller in District V.

* * * * *

[FR Doc.75-17513 Filed 7-1-75;3:24 pm]

Title 12—Banks and Banking

CHAPTER IV—EXPORT-IMPORT BANK OF THE UNITED STATES

PART 400—STANDARDS OF CONDUCT

Subpart F—Employee Report of Securities Transactions

Subpart F is being added to Part 400, Standards of Conduct, in order to allow the Ethics Committee of the Bank to more effectively monitor securities transactions of Bank employees so as to protect the integrity of the Government and avoid employee involvement in potential or actual conflict-of-interest situations. Subpart F is to be added as a new Subpart F to Part 400, Standards of Conduct, which appears in Chapter IV of Title 12 of the Code of Federal Regulations.

Subpart F—Employee Report of Securities Transactions

AUTHORITY: Secs. 602, 701, 702, E.O. 11222; 3 CFR 1964–1965 Comp., p. 306, 5 CFR 735.104 and 735.403(d).

Subpart F—Employee Report of Securities Transactions

§ 400.735–60 Reporting requirement.

Each Bank employee included within the provisions of § 400.735–61 shall report every transaction in any security by submitting a report within ten business days of any such transaction in any security to the Deputy General Counsel, who is a member of the Ethics Committee and has been appointed by the Ethics Committee to administer the reporting requirement described in this Subpart F. Other changes in holdings resulting from inheritance or from reclassification, gift, stock dividend or splitup, for example, shall be reported promptly. The Deputy General Counsel shall report every transaction, as described herein, in which he is personally involved to the Chairman of the Ethics Committee. Reports shall be prepared in duplicate (one original and one carbon copy) on the official form provided for this purpose, which is the Employee Report of Securities Transactions, EIB Form 75–1, copies of which may be obtained from the Personnel Office of the Bank.

§ 400.735–61 Applicability.

The following employees shall be subject to the reporting requirement of § 400.735–60:

(a) Each Director of the Bank, and each Bank employee (whether full-time or part-time) in grade GS–11 and above, under section 5332 of title 5, United States Code, whose holdings have not been placed in a blind trust; and

(b) Each other Bank employee as shall be designated from time to time by the Ethics Committee.

§ 400.735–62 Content of reports.

(a) Each Employee Report of Securities Transactions shall include as to each securities transaction the date of the transaction, the full name of the security (including the date of maturity, if appropriate), whether the security was bought or sold, the number of shares or bonds involved, and the price;

(b) There shall be included in the Report any transaction effected (1) by or on behalf of the Bank employee, (2) for the account of other persons by the Bank employee, directly or indirectly, under a power of attorney or otherwise, and (3) by or on behalf of his spouse, minor child or other member of his immediate household (meaning a resident of the employee's household who is related to him by blood or marriage).

§ 400.735–63 Foreign exchange trading.

No foreign exchange trading for short-term speculative purposes shall be engaged in or effected (a) by or on behalf of the Bank employee, (b) for the account of other persons by the Bank employee, directly or indirectly, under a power of attorney or otherwise, or (c) by or on behalf of his spouse, minor child or other member of his immediate household.

§ 400.735–64 Exceptions.

(a) The requirements of this Subpart F shall not apply to personal promissory notes, individual real estate mortgages, United States Government and Agency securities and securities issued by building and loan associations, and any securities held in or invested by a blind trust;

(b) Any Bank employee who is a trustee or other fiduciary or a beneficiary of a trust or estate holding securities not exempted by (a) of this section shall report the existence and nature of such trust or estate to the Deputy General Counsel. The transactions of such trust or estate shall be subject to all provisions of this Subpart F except in situations where the Bank employee is solely a beneficiary and has no power to control and does not in fact control or advise with respect to the investments of the trust or estate, and except to the extent that the Ethics Committee shall otherwise direct in view of the circumstances of the particular case;

(c) Any Bank employee who believes the requirements of § 400.735–62(b)(3) or § 400.735–63(c) relating to members of the employee's household will result in undue hardship in a particular case may make written application to the Ethics Committee setting out, in detail, the reasons for such belief and requesting a waiver. The Ethics Committee shall be empowered to grant such waiver in such instances and in any other situation arising under this Subpart F in its discretion;

(d) If any information required to be included in a Report, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf in a timely manner;

(e) An employee is not required to submit any information relating to the employee's interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of paragraph (e) of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business en-

terprises" and securities transactions related thereto are required to be included in a Report.

§ 400.735–65 Remedial action.

All Reports submitted to the Deputy General Counsel, as a member of the Ethics Committee, shall be reviewed by him in consultation with the other members of the Ethics Committee as he deems appropriate. If, in the judgment of the Deputy General Counsel, any statement or information discloses a conflict of interest or a possible conflict or interest, between the interests of an employee and the performance of such employee's duties at the Bank, the Deputy General Counsel shall give such employee an opportunity to explain such conflict, or apparent conflict, and if such explanation is not satisfactory, the Deputy General Counsel shall take such action as he deems appropriate to resolve such conflict, or apparent conflict. If the Deputy General Counsel is unable to resolve such conflict, or apparent conflict, he shall report the matter to the Chairman of the Ethics Committee who shall then take appropriate remedial action to end such conflict, or apparent conflict. Remedial action may include, but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee of his conflicting interest;

(c) Disciplinary action; or

(d) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 400.735–66 Confidentiality.

The Bank shall hold each Report in confidence. To insure this confidentiality, the Deputy General Counsel, as a member of the Ethics Committee, is designated to review and retain the statements, and shall be responsible for the maintenance of the statements in confidence, and he shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Bank may not disclose information from a statement except as the Civil Service Commission or the Chairman of the Ethics Committee may determine for good cause shown.

§ 400.735–67 Effect of report on other requirements.

The Reports required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a Report by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

These regulations (subpart F) were approved by the U.S. Civil Service Commission on June 11, 1975, and are effective July 7, 1975.

WILLIAM J. CASEY,
President and Chairman.

[FR Doc.75–17470 Filed 7–3–75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER–920; Amdt. 44]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Surcharge Amendments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

In accordance with established procedure and methodology, the Board, having completed its review of fuel prices for foreign and overseas MAC air transportation services as of June 1, 1975, is herein amending the surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established for those services.[1a]

Appendices A and B [1] set forth the results of our computations of reported fuel price changes for commercial-supplied fuels as at June 1, 1975,[2] based upon the application of the "active stations" methodology to the fuel consumption reported for the quarter ended March 31, 1975; [3] and the rate impact for the changes in current average fuel prices from that reflected in the base rates. Accordingly, we will revise the fuel surcharge rates effective July 1, 1975, as follows: (a) increase the long-range Category B and Category A rate from 1.18 to 3.14 percent; (b) increase the Pacific interisland short-range Category B rate from 1.62 to 5.91 percent; and, (c) increase the "all other" short-range Category B rate from 1.76 to 5.31 percent.

During the past six months, there has been a general stabilization of commercial fuel prices. As set out in Appendix C,[1] if the recent change in military-supplied fuel is not considered, then the largest changes in the fuel surcharge amendments, applicable to the currently effective MAC rates, have developed when station activity for a more recent quarter becomes the basis for fuel distribution. Accordingly, we believe that the monthly surcharge adjustments are no longer necessary; and, henceforth, these amendments will be issued on a quarterly basis, barring any precipitous fluctuation in fuel prices.[4] Under present circumstances, we feel that this will place no undue burden on any of the parties.[5]

In view of the continuing need for a fuel surcharge to the minimum rates set forth in Part 288, we find good cause exists to make the within amendments effective on less than thirty (30) days' notice.

In consideration of the foregoing, the Board hereby amends Part 288 of its Economic Regulations (14 CFR Part 288) effective July 1, 1975, as follows:

Amend § 288.7(a)(2) by revising the third proviso and amend paragraph (d)(2) by revising the proviso to read as set forth below:

§ 288.7 Reasonable level of compensation.

* * * * *

(a) * * *

(2) * * * *Provided, however,* That effective July 1, 1975, the total minimum compensation pursuant to the rates set forth in paragraph (a)(1) of this section for (i) services performed with regular jet, wide-bodied jet, and DC–8F–61/63 aircraft, (ii) Pacific interisland services performed with B–727 aircraft, and (iii) all other services performed with B–727 aircraft shall be increased by surcharges of 3.14 percent, 5.91 percent, and 5.31 percent, respectively.[6]

* * * * *

(d) * * *

(2) * * * *Provided,* That effective July 1, 1975, the total minimum compensation pursuant to the rates specified in paragraphs (d) (1) and (2) of this section shall be increased by a surcharge of 3.14 percent.

* * * * *

(Secs. 204, 403 and 416, Federal Aviation Act of 1958, as amended; 72 Stats. 743, 758 and 771, as amended (49 U.S.C. 1324, 1373 and 1386.))

Effective: July 1, 1975.

Adopted: July 1, 1975.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75–17526 Filed 7–3–75;8:45 am]

[1] Appendices A, B and C are filed as part of the original document.

[1a] ER–896, effective January 17, 1975.

[2] Effective July 1, the price of DOD-supplied fuel is to be increased more than 13.5 percent. We estimate this increase will result in an increase in monthly fuel costs for MAC international services of approximately $265,000. Because the revised fuel surcharge procedure adopted in ER–896 provides for use of current military fuel prices, we have based the calculations herein on the higher July 1 military prices rather than on those in effect on June 1, the cut-off date for determining changes in commercial-fuel prices for this months surcharge adjustment. See ER–896 at 8–9.

[3] The most recent available quarterly report. The Board feels that this is the most representative distribution of fuel as between commercial and military for prospective rate purposes. In keeping with the "active stations" methodology, data for Saturn Airways, Inc. has been excluded, due to suspension of its MAC international operations in January–June 1975.

[4] Accordingly, for monitoring purposes, the carriers should continue to supply the monthly station fuel prices to the Government Rates Division, as well as continuing the quarterly fuel consumption and cost reports.

[5] Under this procedure, the next surcharge rate amendment should be based on station activity during the quarter ended June 30, 1975, at September 1 prices, effective on or about October 1, 1975.

[6] The surcharge provisions for services performed with B–727 aircraft will be applied to all other common-rated aircraft types.

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-311]

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Correction

In FR Doc. 75-16870, appearing at page 27478 in the issue for Monday, June 30, 1975, the following table was inadvertently omitted and should precede the table on page 27479:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program).

Effective Date: June 30, 1975. These Fair Market Rents include projection for construction time through Dec. 31, 1976.

NOTE.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size unit, not to exceed 2-Bedroom, multiplied by 1.05 rounded to the next higher whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units, and (3) single-room occupancy dwelling units are those for 0-Bedroom units of the same type.

AREA OFFICE INDIANAPOLIS, INDIANA REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
INDIANAPOLIS	DETACHED	-	-	369	438	505
	SEMI-DETACHED/ROW	-	222	265	336	360
	WALKUP	196	222	265	324	-
	ELEVATOR	206	247	337	-	-

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 701—COSMETIC LABELING

Hypoallergenic Cosmetic Products

Correction

In FR Doc. 75-14734 appearing at page 24442 in the issue for Friday, June 6, 1975, make the following change. In the preamble on page 24444, in the second column, the fifth line of the third paragraph should be changed to read "to the proposed regulation that the term".

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 75-095]

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT AREAS

Seventeenth Coast Guard District

These amendments revise the description of the marine inspection zones and captain of the port areas in the Seventeenth Coast Guard District. They also reduce the number of captain of the port areas from three to two.

In § 3.85-10 the Juneau Marine Inspection Zone is renamed the Southeast Alaska Marine Inspection Zone. The boundary of the Southeast Alaska Marine Inspection Zone is revised to include an additional area to the northwest comprising the Yakutat Bay and Icy Bay regions.

In § 3.85-15 the Anchorage Marine Inspection Zone is renamed the Western Alaska Marine Inspection Zone. The boundary of the Western Alaska Marine Inspection Zone is revised to delete the Yakutat Bay and Icy Bay regions which are included in the expanded Southeast Alaska Marine Inspection Zone.

The Juneau Captain of the Port is renamed to be the Southeast Alaska Captain of the Port. The Ketchikan Captain of the Port Office is disestablished, and the former Ketchikan Captain of the Port Area is now included in the Southeast Alaska Captain of the Port Area.

The Anchorage Captain of the Port is renamed to be the Western Alaska Captain of the Port. The boundaries of the two captain of the port areas are revised to make them coincide with the boundaries of the marine inspection zones in which the captain of the port offices are located. This effectively deletes a fourth unnamed captain of the port area within the Seventeenth Coast Guard District which comprised those areas of Alaska with respect to which no officers had been designated by the Commandant as Captain of the Port and for which the District Commander was the Captain of the Port, in accordance with 33 CFR 6.01-3. These revisions substantially enlarge the captain of the port areas. The descriptions of the former captain of the port areas, as amended in this document, are transferred to §§ 3.85-10 and 3.85-15. Accordingly, §§ 3.85-55, 3.85-60, and 3.85-65, which contain the present descriptions of these areas, are deleted.

Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b).

In accordance with the foregoing, Part 3 of Chapter I of Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 3.85-10 is revised to read as follows:

§ 3.85-10 Southeast Alaska Marine Inspection Zone and Captain of the Port.

(a) The Southeast Alaska Marine Inspection Office and the Southeast Alaska Captain of the Port Office are located in Juneau, Alaska.

(b) The Southeast Alaska Marine Inspection Zone and the Southeast Alaska Captain of the Port Area comprise the State of Alaska southeast of a straight boundary line which starts at 60°01.3′ N. latitude, 142° W. longitude, thence proceeds northeasterly to its end at the international boundary between the United States and Canada at 60°18.7′ N. latitude, 141° W. longitude.

2. Section 3.85-15 is revised to read as follows:

§ 3.85-15 Western Alaska Marine Inspection Zone and Captain of the Port.

(a) The Western Alaska Marine Inspection Office and the Western Alaska Captain of the Port Office are located in Anchorage, Alaska.

(b) The Western Alaska Marine Inspection Zone and the Western Alaska Captain of the Port Area comprise the State of Alaska west of the following described boundary line, including all of the State of Alaska not covered by section 3.85-10(b): a line which starts at 60°01.3′ N. latitude, 142° W. longitude; thence proceeds in a straight line northeasterly to the international boundary between the United States and Canada at 60°18.7′ N. latitude, 141° W. longitude; thence northward along the international boundary to 69°38.8′ N. latitude, 141° W. longitude.

§ 3.85-55 [Deleted]

§ 3.85-60 [Deleted]

§ 3.85-65 [Deleted]

3. Sections 3.85-55, 3.85-60, and 3.85-65 are deleted.

(5 U.S.C. 552; 14 U.S.C. 633; Sec. 6. Pub. L. 89-670, 80 Stat. 937 (49 U.S.C. 1655(b)); 35 FR 4958-59, 49 CFR 1.46(b))

O. W. SILER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc.75-17467 Filed 7-3-75;8:45 am]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

[Docket No. 73-53; Gen. Order 19, Amdt. 1]

PART 538—DUAL RATE CONTRACT SYSTEMS IN THE FOREIGN COMMERCE OF THE UNITED STATES

Procedures and Requirements for Imposing and Altering Currency Adjustment Surcharges in Event of Change in Exchange Rate of Tariff Currency

The purpose of this regulation is to provide a nonexclusive procedure by which a conference of carriers operating in the foreign commerce of the United States and under an approved dual rate system may justify and impose uniformly applied currency surcharges on all rates within the scope of its dual rate contract on less than 90-day notice when necessary because of depreciation of the conference's tariff currency. This regulation amends Subpart A of Part 538 of the Commission's regulations by: (1) the addition of a new section 538.4 titled "Procedures and Requirements for Imposing and Altering Currency Adjustment Surcharges in the Event of a Change in the Exchange Rate of the Tariff Currency"; and (2) the addition of a new paragraph 14(d) to the Uniform Merchant's Contract currently set forth in § 538.10 of Subpart B of Part 538.

By notice published in August 1973 (38 FR 22495, August 21, 1973), the Commission issued its proposed rule regarding short notice contract rate currency surcharges based upon tariff currency depreciation. The original rule was divided into two lengthy subsections which provided for surcharge imposition and removal or modification, respectively. Comments to the proposed rule were filed by 11 parties representing the views of 30 conferences and the Committee of European Shipowners (now called Council of European & Japanese Shipowners' Association).

While no party commenting raised objection to the policy expressed in the proposed rule, many of the parties objected to various specific provisions of the rule as being complex and burdensome to a degree which made the proposed relief provisions virtually illusory. In response to such comments, and following thorough review and analysis of the parties' views, Hearing Counsel filed its Reply to Comments of the parties.

Based on its exhaustive review of the Comments filed, Hearing Counsel viewed the originally proposed rule as requiring sweeping modification in order to incorporate the comments of the parties, to streamline the proposed rule, and to make the rule workable. Hearing Counsel's Reply to Comments, therefore, consisted of a major revision of the original rule and provides the fundamental scheme of the final rule promulgated here.

Following Hearing Counsel's filing of its revised rule (Reply to Comments), eight parties filed Answers which consisted of comments upon the revision of the rules as proposed by Hearing Counsel. While the revised rule proposed by Hearing Counsel still contained minor points requiring clarification in the opinion of the commenting parties, the majority of those parties filing comments endorsed the revision suggested by Hearing Counsel and generally urged its adoption while reserving certain minor objections.

The rule in this proceeding in its revised form then came before the Commission and the Commission members, as well, raised certain questions which they felt required clarification. By Order of Reopening served on December 31, 1974, the Commission reopened the proceeding for the limited purpose of allowing Hearing Counsel to respond to the questions of the Commission and affording interested parties the opportunity to comment further upon any issues raised thereby. Hearing Counsel thereafter submitted its responses, and nine interested parties filed comments. The rule herein promulgated is derived from the revision proposed by Hearing Counsel and conforms closely to that revision. As such, the discussion of comments is limited to issues raised in comments to that revision and considered by the Commission.

As revised by Hearing Counsel, the rule here promulgated consists of a system by which tariff currency depreciation may serve as a basis on which an adjustment to rates by surcharge may be justified. The computation and justification is founded upon a calculation of "major operating currencies" and the percentage of expenses incurred by a conference and its members in those currencies. The percentage of expenses information is to be maintained up to date by the conferences and those figures submitted to the Commission on a quarterly basis. The relative values of major operating currencies and the tariff currency are then compared to a base specified in the dual rate contract and, if fluctuations when weighted by percentage of expenses so indicate, a currency adjustment surcharge may be imposed on short notice.

One of the major, continuing objections to this rule raised by commenting parties has been the alleged burden upon the conferences which compilation of these quarterly statements entails. The Commission has thoroughly considered this allegation and is unable to agree that the burden is such as to warrant elimination of these expense reports. It has been the experience of the Commission in the past that conferences have been able rapidly to provide such data when requested to do so by the Commission in particular instances. It is the Commission's opinion that such information is reasonably available on a quarterly basis and is maintained in the normal course of business by the member carriers of a conference. This being so, the importance of the data received renders unavoidable the slight burden which may be imposed by this quartely reporting requirement. Therefore, the requirement of the filing of a quarterly statement of percentage of expense in various major operating currencies has been maintained.

A second recurring objection to these rules pertains to the requirement in the rule that currency surcharges imposed must similarly be removed or reduced when the tariff currency appreciates in relation to other major operating currencies. The Commission has considered the suggested omission of the requirement but is unable to accept the proposal. There would appear to be an overwhelming inequity involved in any rule which would permit an increase in rates by surcharge when the tariff currency depreciates, but no removal or reduction of such imposed surcharge when the tariff currency appreciates.

Additional comments have raised the suggestion that the base date used to compare relative currency values should not be "the day this provision was adopted" as proposed by Hearing Counsel. Rather, it has been suggested that a more flexible approach be taken allowing the base date to be the date when the clause in the contract was adopted by a conference, the date on which the last previous surcharge was imposed or some other date. The Commission has reviewed these suggestions and has determined that more flexibility should be allowed in the fixing of a base date. Therefore, the rule as adopted provides for the conference to select its own base date which it shall specify in its dual rate contract. However, in order to preclude the retroactive recovery of currency losses and consequent large surcharges the Commission makes it clear that no base date may be chosen which antedates the day on which the amended contract is submitted to the Commission for approval.

A further issue arose from questions posed by the Commission to Hearing Counsel which merits discussion. As a part of the revision suggested by Hearing Counsel, it was recommended that surcharges justified by the computations in the rule be permitted to be made applicable to the conference trade as a whole or to particular trades or segments of trades covered by the terms of the dual rate contract and the tariff of the conference involved. This recommendation has been adopted in the final rule. However, it is imperative that these terms be clearly understood as they relate to this rule. For purposes of this rule, the terms "trade" or "trade segment", to which a currency surcharge may be applied, are used to mean the following:

"Trade" means those ports within the scope of a dual rate contract and which are included in or are based upon a single rate group.

"Trade segment" means any port or combination of ports which comprise a portion or segment of a "trade".

A further modification has been adopted which was previously implicit in the proposed rule but which has now been made explicit. Except as otherwise provided specifically in the rule, any surcharge imposed pursuant to this rule must be kept completely separate from the general rate structure of the conference. This requirement has been in-

cluded to ward off the obvious regulatory quagmire which the Commission would face in attempting to ascertain the justifiability of a surcharge which had been incorporated into the general rate structure of a conference in the foreign commerce of the United States. Without such a separation of general rates and surcharges, the equitable requirement of reduction in surcharges would have been gutted. Such a lack of enforceability of reductions would have been a disservice to the industry and its shippers and would have resulted in a steady upward spiral of rates. Such an impetus has been determined not to be in the best interest of the public.

One final modification to the rule has been accomplished with respect to the requirement that any currency adjustment surcharge be implemented in certain increments. As proposed, the incremental requirement provided: "Each such surcharge shall take place in increments of not less than two percent." It is the opinion of the Commission that such a provision might be improperly construed as requiring a conference which could justify a three percent surcharge to impose no more than the two percent increment. This would force the conference to absorb the remaining one percent until such time as a four percent surcharge would have justified imposing the next two percent increment. To avoid this possible confusion the rule has been amended by changing the provision quoted above to read: "Each such surcharge imposed shall take place in increments of two percent or more."

In the course of the lengthy proceeding, many other issues have been raised pertaining to specific portions of this rule which have not been discussed here. In the main they have not been discussed because they were considered and incorporated in the rule. A limited number of suggestions raised in the many comments, however, have not been reflected in this rule. Any such suggestions have been thoroughly reviewed by the staff and the Commission itself and have not been adopted only after such review and detailed consideration. To list each comment raised would be more confusing than explanatory and they have therefore not been discussed.

Therefore, pursuant to sections 3 and 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 14b and 43 of the Shipping Act, 1916 (46 U.S.C. 813a and 841a) Part 538 of Title 46 CFR is hereby amended by the addition of a new § 538.4 reading as follows:

§ 538.4 Procedures and requirements for imposing and altering currency adjustment surcharges in the event of a change in the exchange rate of the tariff currency.

(a) *Currency surcharge increases.* (1) A conference [1] of carriers desiring to provide for the imposition of a currency surcharge on rates within the scope of its dual rate contract on less than statutory notice in the event of a depreciation in the exchange rate of its tariff currency relative to other major operating currencies may do so by including in its dual rate contract language as set forth in Article 14(d) of the Uniform Merchant's Contract of Subpart B hereof or as is otherwise approved by the Commission. A major operating currency for purposes of this section is any currency in which the conference as a whole incurs two percent or more of total expenses allocated to the trade. Expenses shall include all allocable vessel operating, overhead and capital expenses.

(2) Concurrent with the filing of a short notice currency provision in its dual rate contract the conference shall file with the Commission a statement listing the percentage of total expenses incurred and payable in each of the major operating currencies weighted by each carrier's share of the total expenses of all the conference members in the trades or trade segments covered by the dual rate contract for which the conference desires to file short notice currency surcharges. Expenses incurred and payable in other currencies are to be excluded from the statement and shall not be considered for the purposes of this section. This statement shall be updated and refiled with the Commission within 30 days after the beginning of each calendar quarter after Commission approval of the currency surcharge provision.

(3) In the event of a change in the exchange rate of any major operating currency in relation to the conference's tariff currency, the conference may impose a currency surcharge on not less than 15 days' notice, provided, such surcharge shall not exceed the amount necessary to restore the prior currency relationship measured from a base date designated by the conference in its dual rate contract. Currency surcharges shall be uniformly applied to all rates covered by the dual rate contract. Each such surcharge imposed shall take place in increments of two percent or more.

(4) Any conference which elects to include a short notice currency surcharge provision in its dual rate contract shall maintain currency surcharges separate from its general rate structure covered by the dual rate contract. Thereafter, currency surcharges may be included in general rates by modifying the base date designated by the conference in its dual rate contract.

(5) The authority for determining fluctuations in the exchange rates shall be a specific exchange rate in a specified major currency exchange market. Both the currency exchange market and the exchange rate selected shall be exclusively used and shall be set forth in the dual rate contract.

(6) At the same time it files notice of a surcharge pursuant hereto, the conference shall file with the Commission a statement showing that such currency surcharge meets the criteria set forth herein. Said statement shall cite the previous day's specified market rates for each major operating currency compared to the same rate in effect on the base date designated by the conference in the dual rate contract and shall also show the percent of expenses in each such currency as shown in its last quarterly percentage of expense statement filed pursuant to this section.

(7) The amount of the currency surcharge needed to restore the prior currency relationship will be calculated as follows:

(i) Determine the nominal appreciation or depreciation of each major operating currency relative to the tariff currency by comparing the previous day's specified market rate quotations with the quotations on the base date designated by the conference in the dual rate contract.

(ii) Weigh the nominal change of all the major operating currencies in proportion to the percentage of expenses payable in each currency and sum to determine the net change in the tariff currency and the resultant amount necessary to restore the prior currency relationship.

(iii) Upon determination of the net change in the tariff currency and the resultant amount necessary to restore the prior currency relationship in accordance with paragraphs (a)(7) (i) and (ii) of this section, in no case shall a currency surcharge be imposed which exceeds the total amount of the currency surcharge justified by the calculation relative to the base date.

Example

	Tariff currency	Currency "A"	Currency "B"	Currency "C"	Currency "D"
Percentage of expenses incurred in major currencies	40	12	30	16.6	1.4
Base value in terms of tariff currency	1.00	1.60	1.15	0.10	0.50
New exchange value in terms of tariff currency	1.00	1.85	1.20	0.095	0.55
Percentage of nominal appreciation	0	+15.6	+4.35	−5.0	+10.0
Weighed appreciation (weighed according to proportion of expenses actually incurred in indicated currency	0	+0.01872	+0.013	−0.0083	[1] NA
Total surcharge to achieve parity: 1.87 percent +1.3 percent−0.83 percent=2.34 percent or 2 percent.					

[1] Not a major currency as defined in this rule.

[1] For purposes of this section the term conference shall also include an independent carrier which maintains a dual rate contract system of rates.

(b) *Currency surcharge reductions.* A conference providing in its dual rate contract for short notice currency surcharges due to currency depreciation shall, as provided in section 14(d)(2) of the uniform contract as set forth in subpart B hereof, provide shippers with corresponding reductions in any such surcharge imposed in the event the value of its tariff currency appreciates with respect to the other major operating currencies. The criteria for imposing and increasing said surcharges shall also apply to reductions, and any reduction shall take place in increments of two percent or more on not more than the number of days notice on which the latest surcharge in effect was imposed. Alternatively, any such reduction may be made effective immediately.

Part 538 of Title 46 CFR is also amended by the addition of a new paragraph 14(d) to the Uniform Merchant's Contract provided in § 538.10 reading as follows:

§ 538.10 Uniform contract.

* * * * *

UNIFORM MERCHANT'S CONTRACT

14. * * *

(d)(1) In the event of a change in the (*specify the major currency market and the applicable rate to be used, vis., New York, 3 p.m. selling*) exchange rate of any major operating currency or currencies as defined in § 538.4(a) of FMC General Order 19 in relation to the conference's tariff currency which would require an increase in the tariff rates of two percent or more in order to restore the prior currency relationship measured from (*specify the base starting date*), the Carriers may impose a currency surcharge on not less than 15 days' written notice to the Merchant, pursuant to procedures and requirements set forth in Section 538.4 of the Federal Maritime Commission's General Order 19. With respect to any surcharge imposed, the Merchant may notify the Carriers in writing not less than ten (10) days before it is to become effective of its intention to suspend the contract, and in such event the contract shall be suspended as of the effective date of such surcharge, unless the Carriers shall give written notice that such surcharge has been rescinded and cancelled.

(2) It is agreed that in the event the Carrier's tariff currency appreciates relative to its other major operating currencies, any currency adjustment surcharge imposed hereunder will be correspondingly reduced pursuant to the procedures and requirements set forth in § 538.4 of the Federal Maritime Commission's General Order 19.

Effective date. This amendment shall become effective August 6, 1975.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.75-17534 Filed 7-3-75;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Address Corrections for Certain Field Offices

1. The following editorial changes will be made to the rules and regulations to reflect the correct addresses of the Federal Communications Commission field offices:

Field offices	From—	To
8	829 Federal Office Bldg., 600 South St., New Orleans, La. 70130.	829 F. Edward Hebert Federal Bldg., 600 South St., New Orleans, La. 70130.
13	314 Multnomah Bldg., 319 Southwest Pine St., Portland, Oreg. 97204.	1782 Federal Office Bldg., 1220 SW. 3d Ave., Portland, Oreg. 97204.
14	3256 Federal Office Bldg., 915 2d Ave., Seattle, Wash. 98174.	3256 Federal Bldg., 915 2d Ave., Seattle, Wash. 98174.

2. Since the amendment is editorial in nature the prior notice and effective date provisions of the Administrative Procedure Act are not applicable. Authority for the promulgation of this amendment is contained in section 4(i) and 5(d) of the Communications Act of 1934, as amended, and § 0.231(d) of the rules.

3. *Accordingly, it is ordered,* effective July 8, 1975, § 0.121(a) of the rules and regulations is amended as set forth below.

(Secs. 4, 5, 303, 48 Stat. as amended, 1066, 1088, 1082; 47 U.S.C. 154, 155, 365)

Adopted: June 26, 1975.

Released: June 27, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
RICHARD D. LICHTWARDT,
Executive Director.

In Chapter I of Title 47 of the Code of Federal Regulations, Part 0 is amended by correcting the field office addresses and by revising the section heading and the heading of the first column in the table as follows:

§ 0.121 Location of field installations.

(a) Field offices and suboffices are located at the following addresses:

Field offices	Address of the engineer in charge	Territory within district: States	Territory within district: Counties
*	* * * *	* *	*
8	829 F. Edward Hebert Federal Bldg., 600 South St., New Orleans, La. 70130.	* * *	* * *
*	* * * *	* *	*
13	1782 Federal Office Bldg., 1220 SW. 3d Ave., Portland, Oreg. 97204.	* * *	* * *
*	* * * *	* *	*
14	3256 Federal Bldg., 915 2d Ave., Seattle, Wash. 98174	* * *	* * *
*	* * * *	* *	*

[FR Doc.75-17496 Filed 7-3-75;8:45 am]

[Docket No. 20205; FCC 75-760]

PART 1—PRACTICE AND PROCEDURE

Processing of FM, TV and Standard Broadcast Applications

1. The deadline for comments in this proceeding was December 9, 1974, and the deadline for reply comments was December 23, 1974. Comments were received from the following parties: Telease, Inc., a franchisee of an over-the-air subscription television system; American Broadcasting Companies, Inc.; Educational FM Associates, a broadcasting consulting and engineering firm; and Big Country Radio Company, applicant for a new FM station in Uvalde, Texas.[1] (No reply comments were received.) Those comments, together with its notice of proposed rulemaking FCC 74-1097, (39 FR 37507) released October 15, 1974, 49 FCC 2d 399 (1974), are now before the Commission for consideration.

[1] Late filed comments were received from Vir James, consulting radio engineers (January 9, 1975), and the Practice and Procedure (Broadcast) Committee of the Federal Communications Bar Association (June 4, 1975). Because these comments were received subsequent to the December 9, 1974, due date, except for noting the general position taken, we will not consider them in this *Report.* The FCBA comments contain additional proposals, including amendments to sections 1.229 and 1.522(b), relating to matters of post-designation practice which we believe to be beyond the scope of this proceeding.

SUMMARY OF COMMENTS

2. The comments are largely supportive of the changes proposed in the notice of proposed rulemaking. Therein we proposed, in the case of applications for construction permits for new television and FM stations, (and major changes in the facilities of existing stations) that the Commission publish periodically in the FEDERAL REGISTER a public notice listing applications which were near the top of the processing line, announcing a date (not less than 30 days after publication) on which the listed applications would be considered available and ready for processing and after which competing (mutually exclusive) applications would not be accepted. (The "cut-off" date, as proposed, would also apply to petitions to deny. Pleadings filed subsequent to the "cut-off" would be treated as informal objections, pursuant to § 1.587 of the rules.) Telease notes that "neither the first applicant nor the potential competing applicant would have any way of knowing how much time would elapse between the filing of the first application and the issuance of the public notice," and that "this time lapse would not be the same for each first applicant." Alternatively, Telease proposes a rule requiring that competing applications be filed within 90 days after the last date of the publication of local notice of the filing of a first application. (Rules governing local publication of notice of filing of applications with the Commission are set forth in § 1.580(c) of our

rules.) Telease states that the report of publication filed with the Commission by the applicant would be available for examination by potential competing applicants, or the Commission could issue a notice that the 90-day period had begun to run and announcing the cut-off date for competing applications. Telease also proposed that any rule which is adopted apply as well to applications for subscription television authority, and that its recommended rule be made applicable to all pending applications, i.e., that in order to be considered, competing applications be required to be on file within 90 days of the effective date of the new rule.

3. With respect to the proposed cut-off rules for competing applications and petitions to deny, ABC merely notes that it "considers these changes to be appropriate." In somewhat more detail, ABC specifically supports the proposal to require assignment of a new file number, "and hence new procedural status," where an amendment to an application for a construction permit effects changes in ownership equivalent to a transfer of control. ABC states that:

> Recently, this problem has arisen in connection with applications for construction permits in conflict with renewal applications * * *. Assuming the desirability of cut-off dates for the filing of applications in conflict with renewal applications, which the Commission has decided upon and which ABC supports, it follows that such cut-off procedures are frustrated if radically different ownership can be substituted through the amendment process subsequent to the cut-off date.

4. Educational FM Associates ("Associates") comments that the lack of cut-off rules may be a more acute problem for educational FM applicants than for commercial FM (and TV) applicants:

> since proposals for the 20 reserved educational channels are processed on a demand rather than a pre-engineered allocation basis. Thus, unlike commercial FM applications, educational proposals may be mutually exclusive even though the communities involved are many miles apart. It is also possible for a number of widely spaced educational proposals to interlock together into a mutually exclusive chain of applications.

Associates also comments that "[m]any educational applicants rely on state or federal funding to finance their proposals," and that "institution of the proposed cut-off procedures would make financial planning substantially easier for educational applicants and should in fact serve to decrease the administrative burden on funding agencies." In addition to supporting the proposed rules for educational FM applications, Associates also supports the proposals as they would affect commercial applicants, noting that:

> [T]he present FM processing system promotes the "poker game" type of approach to preparing FM applications. Thus, a number of applicants for the same facilities are encouraged to constantly amend their proposals to obtain the best competitive position in a comparative hearing. Adoption of cut-off rules for FM similar to those now in effect for AM applications could effectively freeze applicants into a reasonably stable position once the cut-off date is passed.

Like Telease, however, Associates proposes alternative means for accomplishing the objectives of this proceeding, finding several problems with the present AM cut-off procedures which we propose to make applicable to FM and TV applications. One such problem, Associates asserts, is that some applicants are "vulnerable" to competing applications longer than others, depending on where they fall on the cut-off list. Therefore, Associates suggests that "applications be cut off 60 days after the Commission gives public notice that an application has been accepted for filing" and that the administrative act of acceptance be tied to the applicant's demonstration of local publication in accordance with the Commission's rules. Associates also supports the Commission's proposal to fix a common deadline for mutually exclusive applications and petitions to deny, which it believes will "discourage 'testing the wind' with an opposition which, if it appeared doomed to failure, would then be followed up with a mutually exclusive application."

5. Big Country notes that its application for a construction permit was granted by the Chief, Broadcast Bureau, on August 15, 1974, but the grant was rescinded because a mutually exclusive application had been filed on August 8, 1974. Big Country avers that this sequence of events would not have occurred had the proposed rules then been in effect. Big Country goes on to suggest that "the Commission would do well to establish a deadline for publication of its cut-off notice in the Federal Register. The time period could commence to run with the acceptance for filing of an application for a new facility and publication might occur 90 days thereafter." Big Country further comments that "Any serious potential applicant should be well able to prepare and file an application in that amount of time."

Discussion

6. As can be seen from the above summary, the only serious debate concerning the proposed rules involves the proposal to issue a cut-off list at the time an application is near the top of the processing line. Alternatively, various parties commenting on the proposal have suggested fixed cut-off periods of 60, 90 and 120 days (Big Country's ninety-day deadline for issuance of the cut-off list contemplates a further period of roughly 30 days for filing mutually exclusive applications and petitions to deny.)[2] It is thus clear that there are many ideas of what constitutes an appropriate cut-off period.

7. In instituting this proceeding, one of our objectives was to bring uniformity to the processing rules for the AM, FM, and TV broadcasting services. Should we adopt a fixed (as opposed to "flexible") cut-off period for FM and TV applications, adherence to that objective would require amendment of the present AM cut-off rule. That is not in and of itself of great significance. However, there are advantages to a "flexible" cut-off period well worth considering. As we stated in the notice of this rulemaking, in general, the public interest is served where there is an opportunity to choose between competing applicants. See "WFMY Television Corp., et al," 33 FCC 2d 857, 857–858, 22 RR 2d 1032 (1972), aff'd *sub nom.* "Greensboro Television Company v. FCC," 502 F. 2d 475,—U.S. App. D.C.— (1974). The reason for this rulemaking is not to reduce the number of comparative proceedings (although we recognize that such may be one of its most visible effects), but to avoid serious (and occasionally repeated) disruptions of the processing procedure. We believe that this countervailing benefit, which also inures to applicants who have been diligent in prosecuting their applications, is more than sufficient to offset any detriment to the public interest which might follow from the declining number of comparative proceedings which may be expected.

8. This benefit, however, ceases to exist where the cut-off period bears no relationship to the time necessary to reach an application for processing, i.e., the cut-off-is fixed at 30, 60 or 90 days from the date of acceptance for filing. If a competing application is filed at any time before the first application is reached for processing, it stands to reason that there has been no untoward disruption of the staff's processing activity, and hence no benefit sufficient to justify the limitations on the public's interest in choosing between competing applicants. We also believe that, were we to adopt a fixed period from the date of acceptance, we would effectively be obligated to withhold action on applications for at least

---

[2] Vir James' late-filed comments suggest a 60-day cut-off period from the acceptance of the application for filing, followed by a sixty-day period in which major amendments to the application could be filed. Our proposed rules would assign a new file number to applications which were the subject of major amendments; Vir James, apparently, would not so treat amendments if filed within that sixty-day period.

[3] It has been suggested that some unfairness results, because of the intervals between cut-off lists, in that some applications remain on file longer than others before being cut-off. We would note that the proposed rules, with some editorial changes, are the same as those currently in effect for standard broadcast applications, which have previously been subjected to and withstood judicial scrutiny. E.g., *Century Broadcasting Corp.* v. *FCC*, 114 U.S. App. D.C. 59, 310 F. 2d 864 (1962). We do not believe that such discrepancies as may exist would rise to the level of fundamental unfairness, or violate acceptable standards of due process. The FCBA Practice and Procedure Committee notes that: "This [AM] rule greatly enhances administrative convenience and assures that an application will not be filed, remain on file for a substantial period of time, be processed and virtually ready for grant, and then be plunged into a lengthy comparative proceeding by a newly-filed mutually exclusive application. * * * The proposal contains an element of fundamental fairness for applicants which act promptly."

the cut-off period, even though the application could be reached for processing and processing completed before the cut-off date. It would be possible, of course, to state that an application may be granted at any time prior to the cut-off (although not less than 30 days after filing), but such an approach, it would seem, would only lead to the filing of competing applications meeting only the minimal requirements for acceptance and requiring substantial later revision. Thus, we believe the flexible approach of a cut-off date roughly related to the time required to reach an application for processing will best serve the amalgam of relevant interests: the Commissions interest in the orderly processing of applications; the applicant's interest in avoiding unnecessary delay and uncertainty; and the public's interest in seeing that authorizations go to the most qualified applicant.[3] Accordingly, the this rulemaking will be adopted without change.

9. *Major amendments; transfers of control.* In the notice of this rulemaking, we proposed amendment of the rules to provide that new file numbers will be assigned to those applications which are amended in a manner which, in the case of an existing station, would constitute a major change in the station's authorized facilities or, separately or cumulatively, amount to a transfer of control which, in the case of an existing station, would require application on FCC Form 314, 315 or 345 for Commission consent thereto. The comments received on this proposal were supportive, and accordingly, the proposed amendments will be adopted without change.[4]

10. *Petitions to deny.* It was also proposed to fix a common deadline for mutually exclusive applications and petitions to deny. We would note the clear intention of Congress, in establishing the present system of pre-grant procedures (section 309(d) of the Communications Act of 1934, as amended), that the time for filing petitions to deny be reasonably related to the time required to reach an application for processing. See Senate Report No. 690, 86th Cong., 1st Sess. 3 (1959). Because the deadline for filing petitions to deny will be the same as the deadline for filing mutually exclusive applications, which is in turn determined by the time required to reach an application for processing, that connection is clearly made. Accordingly, the proposed rule changes relating to petitions to deny will be adopted without change.[5]

11. *STV Applications.* We have decided not to adopt cut-off rules for applications for subscription television authorization. One reason is the not uncommon practice of filing mutually contingent STV and assignment applications (as occurred, for example, in Chicago, Illinois; Corona, California; Baltimore, Maryland; and Washington, D.C.) In such cases there is absolutely no basis for predicting when or if an STV application will be in a position to be granted. A similar concern exists where an applicant for a new station, with a concurrently filed application for subscription television authority, is mutually exclusive with another new station application where STV is not proposed. Since the STV application must necessarily be dismissed where the applicant does not prevail in the comparative hearing for the construction permit, no purpose would be served by putting the STV application in a protected status until the holder of the construction permit is determined.

12. *Translators.* While the present TV and FM processing rules do not in every respect specifically refer to translator stations, cf. § 1.572(a)(1) and § 1.573(a)(1), the Commission practice has been to apply the ame processing rules to tranlator application a to applications in the regular TV and FM broadcast services. We take this opportunity to point out that, in keeping with this practice, the amended rules will apply to translators of both types.

13. The other amendments proposed in the notice of this rulemaking are editorial in nature, necessary only to assure consistency with those basic changes described above. No comments concerning these changes were received, and they are herewith adopted without change, with the exception of the proposed amendments to the note to § 1.227(b)(1) and Note 1 to § 1.591(b). In view of the other amendments we are adopting, we believe those notes are now superfluous and their deletion is therefore in order.

14. The rule changes adopted herein will be effective August 8, 1975, and will be applicable to all applications then on file as well as to applications filed after the effective date. With respect to those applications presently on file, lists will be published as each becomes available for processing, fixing a cut-off date in the manner provided for by the revised rules. (Because we have elected to proceed in this manner, we have deleted our proposed Note 3 to § 1.591(b).)

15. Authority for the adoption of the amendments herein is contained in section 4(i), section 303(r) and section 309(g) of the Communications Act of 1934, as amended.

16. Accordingly, *it is ordered,* That effective August 8, 1975, Part 1 of the Commission's rules and regulations is amended as set forth below. *It is further ordered,* That this proceeding is hereby terminated.

(Secs. 4, 303, 309, 48 Stat., as amended, 1066, 1082, 1085; (47 U.S.C. 154, 303, 309))

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Adopted: June 24, 1975.

Released: July 2, 1975.

Part 1 of Chapter I, Title 47 of the Code of Federal Regulations is amended to read as follows:

§ 1.227 [Amended]

1. In § 1.227, the Note following paragraph (b) is deleted.

2. In § 1.522, paragraph (a) is amended to read as follows:

§ 1.522 Amendment of applications.

(a) Subject to the provisions of §§ 1.525, 1.571(j), 1.572(b), 1.573(b), and 1.580, any application may be amended as a matter of right prior to the adoption date of an order designating such application for hearing, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 1.513. If a petition to deny (or designate for hearing) has been filed, the amendment shall be served on the petitioner.

* * * * *

3. In § 1.571, paragraph (j) (2) and (3) are revised to read as follows:

§ 1.571 Processing of standard broadcast applications.

* * * * *

(j) * * *

(2) A new file number will be assigned where an application for a new station is amended (whether by a single amendment or by a series of amendments) so as to result in an assignment or transfer of control which, in the case of an authorized station, would require the filing of an application therefor on FCC Form 314, 315, or 345 (see § 1.540), and § 1.580 will apply to such amended application.

(3) An application for changes in the facilities of an existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of said licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

4. In § 1.572, paragraphs (b) and (c) are revised to read as follows:

§ 1.572 Processing of television broadcast applications.

* * * * *

(b) A new file number will be assigned to an application for a new station, or

[3] Our action in this Report and Order also includes an editorial change in § 1.571(j)(3), relating to applications for changes in the facilities of standard broadcast stations for which the license is assigned or a transfer of control occurs during the pendency of the application, and addition of similar provisions to the appropriate sections of the rules governing the processing of television and FM applications. Because these amendments are only of a clarifying nature, the notice requirements of the Administrative Procedure Act do not apply. 5. U.S.C. 553(b)(A).

[5] The FCBA Practice and Procedure Committee proposed an amendment to § 1.587 (and necessary editorial changes elsewhere) to make informal objections subject to the same deadline as "petitions to deny," "unless the Commission or the designated authority determines that consideration of the facts relied on is required in the public interest."

for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or so as to result in an assignment or transfer of control (whether by a single amendment or by a series of amendments), which, in the case of an authorized station, would require the filing of an application therefor on FCC Form 314, 315, or 345 (§ 1.540), and § 1.580 will apply to such amended application. An application for changes in the facilities of an existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of said licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Applications for television stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing for the earliest filed application is begun, the Commission will periodically publish in the FEDERAL REGISTER a Public Notice listing applications which are near the top of the processing line and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all applications must be filed if they are to be grouped with any of the listed applications.

* * * * *

5. In § 1.573, paragraph (b) is revised and paragraphs (d) and (e) are added, to read as follows:

§ 1.573 Processing of FM and noncommercial FM broadcast applications.

* * * * *

(b) A new file number will be assigned to an application for a new station, or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section, or so as to result in an assignment or transfer of control (whether by a single amendment or by a series of amendments) which, in the case of an authorized station, would require the filing of an application therefor on FCC Form 314, 315, or 345 (see § 1.540), and § 1.580 will apply to such amended application. An application for changes in the facilities of an existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of said licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

(d) Applications for FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the Commission will periodically publish in the FEDERAL REGISTER a public notice listing applications which are near the top of the processing line and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all applications must be filed if they are to be grouped with any of the listed applications.

(e) Where applications are mutually exclusive because the distance between their respective proposed transmitter sites is contrary to the station separation requirements set forth in § 73.207 of this chapter (§ 73.504, of this chapter in the case of noncommercial educational stations) of this chapter, said applications will be processed and designated for hearing at the time the application with the lower file number is reached for processing. In order to be considered mutually exclusive with a lower file number application, the higher file number application must have been accepted for filing at least one day before the lower file number application has been acted upon by the Commission.

5. In § 1.580, paragraph (i) is amended to read as follows:

§ 1.580 Local notice of the filing of broadcast applications, and timely filing of petitions to deny them.

* * * * *

(i) Any party in interest may file with the Commission a petition to deny any such application (whether as originally filed or as amended) no later than 30 days after issuance of a public notice of the acceptance for filing of any such application or amendment thereto: *Provided,* That in the case of applications for facilities in the standard, FM and television broadcasting services, petitions may be filed at any time prior to the day of Commission grant thereof without hearing or the formal designation thereof for hearing; but where the Commission issues a public notice pursuant to the provisions of § 1.571(c), 1.572(c) or § 1.573(d), listing applications as available and ready for processing, no petitions to deny any such listed application will be accepted after the "cut-off" date specified in the public notice. Where an application is filed prior to the "cut-off" date mutually exclusive with an application listed in the public notice, a petition to deny the later-filed application may be filed no later than 30 days after issuance of public notice of the acceptance for filing of the application: *And Provided Further,* That in the case of applications for renewal of license, petitions to deny may be filed at any time up to the last day for filing mutually exclusive applications under § 1.516(e). Requests for extension of time to file petitions to deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

* * * * *

§ 1.591 [Amended]

6. In § 1.591(b), Note 1 is deleted, and Note 2 is redesignated as Note 1.

[FR Doc.75-17497 Filed 7-3-75;8:45 am]

[Docket Nos. 19828, 19823; RM-1910, 2282, 2233]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations, Missouri; Correction

In the matter of amendment of § 73.202 (b), table of assignments, FM broadcast stations. (Lexington, Liberty and Butler, Missouri).

1. The effective date of modification of the outstanding license held by Bates County Broadcasting Co. for Station KMOE(FM), Butler, Missouri, was inadvertently omitted from paragraph 17 of the Report and Order in this proceeding (adopted on June 10, 1975), published at 40 FR 26552.

2. Accordingly the words ", effective July 28, 1975," are inserted immediately following the words "is modified" in the first sentence of paragraph 17.

Released: June 24, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-17498 Filed 7-3-75;8:45 am]

[Docket No. 19948; FCC 75-609]

PART 76—CABLE TELEVISION SERVICES

Maintenance of Public Inspection Files and Permit System Inspections

Correction

In FR Doc. 75-15388, appearing at page 25022 in the issue for Thursday, June 12, 1974, the paragraph reference in line 10 of § 76.305(c) should read "(a)(5)".

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 75-1; Notice 2]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires, Tire Selection and Rims for Passenger Cars

This amendment adds certain tire size designations to 49 CFR 571.109 (Federal Motor Vehicle Safety Standard No. 109) and adds alternative and test rim sizes

to 49 CFR 571.110 (Federal Motor Vehicle Safety Standard No. 110).

Guidelines were published in the FEDERAL REGISTER on October 5, 1968 (33 FR 14964), and amended August 13, 1974 (39 FR 28980), specifying procedures by which routine additions could be made to Appendix A, § 571.109 and to Appendix A, § 571.110. Under these guidelines the additions become effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

Accordingly, Appendix A of 49 CFR 571.109 and Appendix A of 49 CFR 571.110 are amended, subject to the 30-day provision indicated above, as specified below.

Effective date: August 6, 1975, if objections are not received.

A. The following changes are made to Appendix A of § 571.109, Standard No. 109; new pneumatic tires:

AMENDMENTS REQUESTED BY THE RUBBER MANUFACTURERS ASSOCIATION

1. A new Table I–AA, "P/80 Series" ISO Type Tires, incorporating the following new tire size designations and corresponding values, is added.

TABLE I–AA.—*Tire load ratings, test rims, minimum size factors, and section widths for "P/80 Series"-ISO type tires*

Tire size[1] designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width[2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
P155/80R13[3]	660	705	740	760	795	825	860	880	905	935	960	980	1,005	4½	28.46	6.18

[1] The letters 'H', 'S' or 'V' may be included in any specified tire size designatiou adjacent to the "80".
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.
[3] The letters 'D' for diagonal and 'B' for belted may be used in place of the 'R'.

2. In Table I–R, the following new tire size designations and corresponding values are added.

TABLE I–R.—*Tire load ratings, test rims, minimum size factors, and section widths for "60 Series" radial ply tires*

Tire size designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
HR60–14	1,200	1,290	1,360	1,440	1,510	1,580	1,650	1,710	1,770	1,830	1,890	1,950	2,010	7	36.20	10.25
JR60–15	1,260	1,350	1,430	1,500	1,580	1,650	1,720	1,790	1,860	1,920	1,980	2,040	2,100	7	37.20	10.25

AMENDMENT REQUESTED BY MICHELIN TIRE CORPORATION

1. In Table I–M, the following new tire size designation and corresponding values are added.

TABLE I–M.—*Tire load ratings, test rims, minimum size factors, and section widths for "78 Series" radial ply tires*

Tire size designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
KR78–15	1,290	1,380	1,460	1,540	1,620	1,690	1,770	1,830	1,900	1,970	2,030	2,090	2,150	6	37.03	8.70

AMENDMENTS REQUESTED BY THE EUROPEAN TYRE AND RIM TECHNICAL ORGANISATION

1. In Table I–N, the following new tire size designations and corresponding values are added.

TABLE I–N.—*Tire load ratings, test rims, minimum size factors, and section widths for "70 Series" radial ply tires*

Tire size designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
155/70R12	580	595	615	630	650	665	685	700	720	735	750	765	780	4	26.13	5.93
165/70R12	665	680	700	720	740	760	780	795	815	835	850	870	890	4½	27.43	6.50

TABLE I–Y.—*Tire load ratings, test rims, minimum size factors, and section widths for All Millimetric "65" Series radial ply tires*

Tire size designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (m.m.)	Minimum size factor (inches)	Section width (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
205/65R375	920	970	1,020	1,070	1,120	1,170	1,220	1,265	1,310	1,355	1,400	1,445	1,490	105	32.65	7.76

2. A new Table I–Y, Millimetric "65" Series Radial Ply Tires, incorporating the following new tire size designation and corresponding values, is added.

B. The following changes are made to Appendix A of § 571.110, Standard No. 110; Tire Selection and Rims.

AMENDMENTS REQUESTED BY THE RUBBER MANUFACTURERS ASSOCIATION

1. In Table I–J, the 6–JJ alternative rim size is added for the B78–13 tire size designation.

2. In Table I–M, the 7–JJ alternative rim size is added for the ER78–14 tire size designation.

3. In Table I–R, the 7–JJ test rim size is added for the HR60–14 tire size designation. The 7–JJ test rim size is added for the JR60–15 tire size designation.

4. In new Table I–AA the 4½–JJ test rim size is added for the P155/80R13 tire size designation. The 4½–JJ test rim size is added for the P155/80D13 tire size designation. The 5–JJ alternative rim size is added for the P155/80R13 and P155/80D13 tire size designations.

AMENDMENTS REQUESTED BY THE MICHELIN TIRE CORPORATION

1. In Table I–M, the 6–JJ test rim size is added for the KR78–15 tire size designation. The 5½–JJ, 5½K, 6K, 6L, 6½–JJ, 6½K, 6½L, 7–JJ, 7L, 8–JJ and 8L alternative rim sizes are added for the KR78–15 tire size designation.

AMENDMENTS REQUESTED BY THE EUROPEAN TYRE AND RIM TECHNICAL ORGANISATION

1. In Table I–N, the 4 test rim size is added for the 155/70R12 tire size designation. The 4.50B, 4.50C, 4½–JJ, 5–JJ and 5½–JJ alternative rim sizes are added for the 155/70R12 tire size designation. The 4½ test rim size is added for the 165/70R12 tire size designation. The 4.50B, 4.50C, 4½–JJ, 5–JJ and 5½–JJ alternative rim sizes are added for the 165/70R12 tire size designation.

2. In new Table I–Y, the 105DD test rim is added for the 205/65R375 tire size designation.

FMVSS No. 110

APPENDIX A, TABLE I

(Following is a tabulation of changes made by this amendment)

Tire Size	*Rims*
TABLE I–J	
B78–13	6–JJ
TABLE I–M	
ER78–14	7–JJ
KR78–14	5½–JJ, 5½–K, *6–JJ*, 6–K, 6–L, 6½–JJ, 6½–K, 6½–L, 7–JJ, 7–L, 8–JJ, 8–L
TABLE I–N	
155/70R12	*4*, 4.50B, 4.50C, 4½–JJ, 5–JJ, 5½–JJ
165/70R12	4½, 4.50B, 4.50C, 4½–JJ, 5–JJ, 5½–JJ
TABLE I–R	
HR60–14	*7–JJ*
JR60–15	*7–JJ*
TABLE I–Y	
205/65R375	*105DD*
TABLE I–AA	
P155/80R13	*4½–JJ*, 5–JJ
P155/80D13	*4½–JJ*, 5–JJ

Italic designations denote test rims. Where JJ rims are specified in the above table, J and JK rim contours are permissible. Table designations refer to tables listed in Appendix A of Standard No. 109 (§ 571.109).

(Secs. 103, 119, 201 and 202, Pub. L. 89–563, 80 Stat. 718, 15 U.S.C. 1392, 1407, 1421 and 1422; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.)

Issued on June 26, 1975.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.75–17352 Filed 7–3–75;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 21—MIGRATORY BIRD PERMITS

The Fish and Wildlife Service proposed changes to its regulations concerning the permanent marking for identification of captive-reared migratory waterfowl, on October 18, 1974 (39 FR 37199). Public comments have been received and evaluated on the proposal. As a result, a few technical changes have been made, but essentially the regulations are being adopted as they were proposed.

Summary of the proposal. The proposal would have amended §§ 21.13 and 21.14 of the regulations to provide several alternative methods for the permanent marking of mallard ducks and migratory waterfowl other than mallard ducks. These methods are (1) removal of the hind toe from the right foot, (2) pinioning of a wing, (3) banding with a seamless metal band, (4) or tatooing on the web of one foot. Certain consequential changes would have been made in the waterfowl sale and disposal permits, in § 21.25. The Special Aviculturist Permit would have been deleted, as it became unnecessary in the light of the other changes.

Summary of the public comments. Comments were received from State conservation agencies, individuals, organizations, and institutions involved with captive-reared waterfowl. These comments were virtually all favorable to the proposed regulation. A few specific changes were suggested and adopted. The first requires the marking of both carcasses and containers of mallard ducks killed on game farms or shooting preserves, and was suggested by the State of Nebraska to conform to present practice. The second change requires a copy of the waterfowl sale and disposal permit to accompany the actual shipment of the birds. This will facilitate enforcement of the regulations, as well as speed the course of shipment for legitimate transactions.

Accordingly, the following amendments to Part 21, Subchapter B, Chapter I of Title 50, Code of Federal Regulations are hereby adopted, to be effective upon July 31, 1975.

E. V. SCHMIDT,
Acting Director, U.S. Fish and Wildlife Service.

JUNE 30, 1975.

1. Section 21.13 is amended to read as follows:

§ 21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported, exported (but not imported), and disposed of by any person without a permit, subject to the following conditions, restrictions, and requirements:

(a) Nothing in this section shall be construed to permit the taking of live mallard ducks or their eggs from the wild.

(b) All mallard ducks possessed in captivity, without a permit, shall have been physically marked by at least one of the following methods prior to 6 weeks of age and all such ducks hatched, reared, and retained in captivity thereafter shall be so marked prior to reaching 6 weeks of age.

(1) Removal of the hind toe from the right foot.

(2) Pinioning of a wing: *Provided,* That this method shall be the removal of the metacarpal bones of one wing or a portion of the metacarpal bones which renders the bird permanently incapable of flight.

(3) Banding of one metatarsus with a seamless metal band.

(4) Tattooing of a readily discernible number or letter or combination thereof on the web of one foot.

(c) When so marked, such live birds may be disposed of to, or acquired from, any person and possessed and transferred in any number at any time or place: *Provided,* That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 6 weeks of age.

(d) When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: *Provided,* That such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be shot, in any number, at any time or place, by any person for bona fide dog training or field trial purposes: *Provided further,* That the provisions of the hunting regulations (Part 20 of this subchapter) and the Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass: *Provided,* That persons, who operate game farms or shooting preserves under a State license, permit, or authorization for such activities, may remove the marked foot or wing when either the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass and on the container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization. When properly marked, such carcasses may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place.

2. Section 21.14 is amended to read as follows:

§ 21.14 Permit exceptions for captive-reared migratory waterfowl other than mallard ducks.

Any person may, without a permit, lawfully acquire captive-reared and

properly marked migratory waterfowl of all species other than mallard ducks, alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs therefrom solely for his own use subject to the following conditions and restrictions:

(a) Such birds, alive or dead, or their eggs may be lawfully acquired only from holders of valid waterfowl sale and disposal permits except that properly marked carcasses of such birds may also be lawfully acquired as provided under paragraph (c) of this section.

(b) All progeny of such birds or eggs hatched, reared, and retained in captivity must be physically marked as defined in § 21.13(b).

(c) No such birds or eggs or any progeny or eggs thereof may be disposed of by any means, alive or dead, to any other person unless a waterfowl sale and disposal permit has first been secured authorizing such disposal: *Provided,* That bona fide clubs, hotels, restaurants, boarding houses, and dealers in meat and game may serve or sell to their customers the carcass of any such birds which they have acquired from the holder of a valid waterfowl sale and disposal permit.

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild. (See Part 20 of this subchapter.)

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass, unless such carcasses were marked as provided in § 21.25(c)(4) and the foot or wing removed prior to acquisition.

(f) When any such birds, alive or dead, or their eggs are acquired from a waterfowl sale and disposal permittee, the permittee shall furnish a copy of form 3–186, Notice of Waterfowl Sale or Transfer, indicating all information required by the form and the method or methods by which individual birds are marked as required by § 21.25(c)(2). The buyer shall retain the form 3–186 on file for the duration of his possession of such birds or eggs or progeny or eggs thereof.

3. Section 21.25 is amended to read as follows:

§ 21.25 Waterfowl sale and disposal permits.

(a) *Permit requirement.* A waterfowl sale and disposal permit is required before any person may lawfully sell, trade, donate, or otherwise dispose of, to another person, any species of captive-reared and properly marked migratory waterfowl or their eggs, except that such a permit is not required for such sales or disposals of captive-reared and properly marked mallard ducks or their eggs.

(b) *Application procedures.* Applications for waterfowl sale and disposal permits shall be submitted to the appropriate Special Agent in Charge (see: § 13.11(b) of this subchapter). Each such application must contain the general information and certification required in § 13.12(a) of this subchapter, plus the following additional information:

(1) A description of the area where waterfowl are to be kept;

(2) Species and numbers of waterfowl now in possession and a statement showing from whom these were obtained;

(3) A statement indicating the method by which individual birds are marked as required by the provisions of this Part 21; and

(4) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, waterfowl sale and disposal permits shall be subject to the following conditions:

(1) Permittees may not take migratory waterfowl or their eggs from the wild, and may not acquire such birds or their eggs from any person not authorized by a valid permit issued pursuant to this part to dispose of such birds or their eggs.

(2) All live migratory waterfowl possessed in captivity under authority of a valid waterfowl sale and disposal permit shall have been, prior to 6 weeks of age, psysically marked as defined in § 21.13(b). All offspring of such birds hatched, reared, and retained in captivity shall be so marked prior to attaining 6 weeks of age. The preceding does not apply to captive adult geese, swans, and brant which were marked previous to March 1, 1967, by a "V" notch in the web of one foot, nor to such birds held in captivity at public zoological parks, and public scientific or educational institutions.

(3) Such properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild.

(4) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass: *Provided,* That permittees who are also authorized to sell game under a State license, permit or authorization may remove the marked foot or wing from the raw carcasses if the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass and on the wrapping or container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization.

(5) Such properly marked birds, alive or dead, or their eggs may be disposed of in any number, at any time or place, to any person: *Provided,* That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 6 weeks of age: *And provided further,* That on each date that any such birds or their eggs are transferred to another person, the permittee must complete a form 3–186, Notice of Waterfowl Sale or Transfer, indicating all information required by the form and the method or methods by which individual birds are marked as required by § 21.25(c)(2). (Service will provide supplies of form.) The permittee will furnish the original of completed form 3–186 to the person acquiring the birds or eggs; retain one copy in his files as a record of his operations: attach one copy to the shipping container for the birds or eggs, or include the copy in shipping documents which accompany the shipment; and, on or before the last day of each month, mail two copies of each form completed during that month to the office of the Fish and Wildlife Service which issued his permit.

(6) Permittees shall submit an annual report within 10 days following the 31st day of December of each calendar year to the office of the Fish and Wildlife Service which issued the permit. The information provided shall give the total number of waterfowl by species in possession on that date and the method or methods by which individual birds are marked as required by the provisions of this Part 21.

(d) *Tenure of permits.* The tenure of waterfowl sale and disposal permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

§ 21.26 [Reserved]

4. Section 21.26 is deleted, and the section number is reserved:

[FR Doc.75–17540 Filed 7–3–75;8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Reg. 505]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period July 4–10, 1975.[1] It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908. The quantity of Valencia oranges so fixed was arrived at after consideration of the total available supply of Valencia oranges, the quantity of

[1] This document was received by the Office of the Federal Register July 2, 1975.

Valencia oranges currently available for market, the fresh market demand for Valencia oranges, Valencia orange prices, and the relationship of season average returns to the parity price for Valencia oranges.

§ 908.805 Valencia orange regulation 505.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the respective quantities of Valencia oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Valencia orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Valencia oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Valencia oranges has slowed somewhat. Prices f.o.b. averaged $3.82 per carton on a reported sales volume of 975,000 cartons last week, compared with an average f.o.b. price of $3.84 per carton and sales of 1,130,000 cartons a week earlier. Track and rolling supplies at 485 cars were down 104 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Valencia oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 1, 1975.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period July 4, 1975, through July 10, 1975, are hereby fixed as follows:

(i) District 1: 210,000 cartons;

(ii) District 2: 390,000 cartons;

(iii) District 3: Unlimited movement."

(2) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674)

Dated: July 2, 1975.

CHARLES R. BRADER,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75-17622 Filed 7-3-75;8:45 am]

[Lemon Reg. 699]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period July 6–12, 1975.[1] It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.999 Lemon Regulation 699.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this section to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is currently slow as poor fruit condition is limiting sales. Average f.o.b. price was $6.34 per carton the week ended June 28, 1975, compared to $6.47 per carton the previous week. Track and rolling supplies at 230 cars were down 5 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly

[1] This document was received by the Office of the Federal Register July 2, 1975.

submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 1, 1975.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period July 6, 1975, through July 12, 1975, is hereby fixed at 275,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 2, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75–17608 Filed 7–3–75;8:45 am]

[Lime Reg. 5]

PART 911—LIMES GROWN IN FLORIDA

Limitation of Handling

This regulation fixes the quantity of Florida limes that may be shipped to fresh market during the weekly regulation period July 6–12, 1975.[1] It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 911. The quantity of limes so fixed was arrived at after consideration of the total available supply of Florida limes, the quantity currently available for market, lime prices, and the relationship of season average returns to the parity price for Florida limes.

§ 911.405 Lime Regulation 5.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 37 FR 10497), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Florida Lime Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of limes that may be marketed during the ensuing week stems from the production and marketing situation confronting the Florida lime industry.

(i) The committee has submitted its recommendation with respect to the quantity of limes which it deems advisable to be handled during the succeeding week. Such recommendation results from consideration of the factors enumerated in the order. The committee further reports the fresh market demand for limes has improved somewhat and excess supplies are now beginning to clear the market. Fresh shipments for the weeks ended June 28, 1975, and June 21, 1975, were 27,777 bushels and 27,684 bushels respectively.

(ii) Having considered the recommendation and information submitted by the committee, and other available information the Secretary finds that the quantity of limes which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Florida limes, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such limes; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on July 1, 1975.

(b) *Order.* (1) The quantity of limes grown in Florida which may be handled during the period July 6, 1975, through July 12, 1975, is hereby fixed at 27,500 bushels.

(2) As used in this section, "handled" and "limes" have the same meaning as when used in said amended marketing agreement and order, and "bushel" means 55 pounds of limes.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 2, 1975.

CHARLES R. BRADER,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75–17623 Filed 7–3–75;8:45 am]

[Nectarine Reg. 6, Amdt. 1]

PART 916—NECTARINES GROWN IN CALIFORNIA

Minimum Grade and Size Regulations

This amendment extends the grade and size requirements contained in Nectarine Regulation 6 from July 12, 1975, through May 31, 1976. Nectarine Regulation 6, effective during the period May 20 through July 11, 1975, prescribes that shipments of California nectarines be at least U.S. No. 1 grade except that (1) a slightly smaller area of the surface of each fruit may be affected by fairly light colored, fairly smooth scars, (2) an additional tolerance is provided for individual fruit not well formed but not badly misshapen, and (3) a slightly larger area of the surface of each fruit of the Sun Free and Golden Grand varieties may be affected by fairly smooth or smooth russeting. The regulation also prescribes minimum sizes for 46 named varieties. The extension of the effective period of Nectarine Regulation 6 is designed to maintain orderly marketing conditions and provide consumers with an ample supply of acceptable-quality fruit.

Notice was published in the FEDERAL REGISTER on June 4, 1975 (40 FR 24018), that consideration was being given to a proposal to amend Nectarine Regulation 6 (§ 916.348; 40 FR 21693), effective pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed amendment was recommended by the Nectarine Administrative Committee, established under said amended marketing agreement and order as the agency to administer the terms and provisions thereof. The notice provided that all written data, views, or arguments in connection with Nectarine Regulation 6 or the proposed amendment thereof be submitted by June 25, 1975. None were received.

The amendment reflects the Department's appraisal of the need for regula-

[1] This document was received by the Office of Federal Register July 2, 1975.

tion of shipments of California nectarines during the period July 12, 1975, through May 31, 1976, based on the available supply and current and prospective market conditions. California nectarine production in 1975 is estimated at 105,000 tons. This would be 8 percent less than last season's record crop but 23 percent more than 1973. The minimum grade and size requirements specified for California nectarines are consistent with the quality and size composition of the estimated crop of nectarines. The amendment is necessary to ensure the continued shipment of nectarines which satisfy the demands of the fresh fruit market. The amendment is consistent with the objective of the act of promoting orderly marketing and protecting the interest of consumers.

After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice and other available information, it is hereby found that the regulation of shipments of California nectarines, as hereinafter set forth, is in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for making this amendment effective at the time hereinafter set forth and for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this amendment, including the effective date of July 12, 1975, was published in the FEDERAL REGISTER on June 4, 1975 (40 FR 24018), and no objection to such amendment or effective date was received; (2) the regulatory provisions are the same as those contained in said notice; and (3) compliance with the regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. In § 916.348 (Nectarine Regulation 6; 40 FR 21693) the provisions of paragraphs (a) (1), (2), (3), (4), (5), and (6) are amended to read as follows:

§ 916.348 Nectarine Regulation 6.

(a) *Order.* (1) During the period July 12, 1975, through May 31, 1976, no handler shall handle any package or container of any variety of nectarine unless such nectarines grade at least U.S. No. 1: *Provided,* That nectarines 2 inches in diameter or smaller, or 4 x 4 size or smaller, shall not have fairly light colored, fairly smooth scars which exceed the aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter, or larger than 4 x 4 size, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided* further, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided* further, That not more than 25 percent of the surface of each fruit of the Sun Free and Golden Grand varieties may be affected by fairly smooth or smooth russeting.

(2) During the period July 12, 1975, through May 31, 1976, no handler shall handle any package or container of May-red variety nectarines unless:

* * * * *

(3) During the period July 12, 1975, through May 31, 1976, no handler shall handle any package or container of Armking, Crimson Gold, Mayfair, or Zee Gold variety nectarines unless:

* * * * *

(4) During the period July 12, 1975, through May 31, 1976, no handler shall handle any package or container of June Belle, June Grand, May Grand, Red June, Spring Grand, or Sunbright variety nectarines unless:

* * * * *

(5) During the period July 12, 1975, through May 31, 1976, no handler shall handle any package or container of Early Sungrand, Grandandy, Independence, Moon Grand, Star Grand I, Star Grand II, Sun Flame, Summer Grand, Sun Grand, Rose, or Kent Grand variety nectarines unless:

* * * * *

(6) During the period July 12, 1975, through May 31, 1976, no handler shall handle any package or container of Autumn Grand, Clinton-Strawberry, Fantasia, Flamekist, Flavortop, Gold King, Granderli, Grand Prize, Harry Grand, Hi-Red, Late Le Grand, Le Grand, Niagara Grand, Red Grand, Regal Grand, Richards Grand, Royal Grand, September Grand, Sun Free, Fairlane, Grand Giant, Red Free, Bob Grand, or Tom Grand variety nectarines unless:

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 1, 1975, to become effective July 12, 1975.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75-17542 Filed 7-3-75;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.1]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

MAXIMUM ADJUSTED INCOME FOR MODERATE-INCOME FAMILIES

The Farmers Home Administration is amending Exhibit D of Subpart A of Part 1822 of Title 7, Code of Federal Regulations (39 FR 45005) to further improve the operation and administration of the section 502 rural housing loan program. This amendment revises the adjusted income limits for moderate-income families applying for FmHA rural housing loan assistance.

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U..C. 553 with respect to such rules. These regulations, however, are not published for proposed rulemaking because the changes increase the income limits for eligibility for a rural housing loan in some states and enable the Agency to expedite needed benefits to the public, and to delay issuance of such regulations by publishing for public comment would be contrary to the public interest.

Interested persons may submit written comments, suggestions, data or arguments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, United States Department of Agriculture, Room 6316, South Building, Washington, D.C. 20250, on or before August 6, 1975. Material thus submitted will be evaluated and acted upon in the same manner as if this document was a proposal. However, this revised part shall remain effective until it is amended. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Chief, Directives Management Branch, during regular business hours (8:15 a.m.–4:45 p.m.).

As revised, Exhibit D of Subpart A of Part 1822, reads as follows:

EXHIBIT D—MAXIMUM ADJUSTED INCOME FOR MODERATE-INCOME FAMILIES

State	Maximum adjusted income
Alabama	$12,900
Arizona	12,900
Arkansas	12,900
California	12,900
Hawaii	13,500
Nevada	12,900
Colorado	12,900
Florida	12,900
Georgia	12,900
Idaho	12,900
Illinois	12,900
Indiana	12,900
Iowa	12,900
Kansas	12,900
Kentucky	12,900
Louisiana	12,900
Maine	12,900
Michigan	12,900
Minnesota	12,900
Mississippi	12,900
Missouri	12,900
Montana	12,900
Nebraska	12,900
Delaware	12,900
New Jersey	12,900
Maryland	12,900
New Mexico	12,900
New York	12,900
North Carolina	12,900
North Dakota	12,900
Ohio	12,900
Oklahoma	12,900
Oregon	12,900
Alaska	16,500
Pennsylvania	12,900
South Carolina	12,900
South Dakota	12,900
Tennessee	12,900
Texas	12,900

State	Maximum adjusted income
Utah	12,900
Vermont	12,900
Connecticut	12,900
Massachusetts	12,900
New Hampshire	12,900
Rhode Island	12,900
Virginia	12,900
Washington	12,900
West Virginia	12,900
Wisconsin	12,900
Wyoming	12,900
Puerto Rico	12,900
Virgin Islands	12,900

Effective date. This amendment is effective July 7, 1975.

(42 U.S.C. 1480; delegation of authority, Sec. of Agri., 7 CFR 2.23; delegation of authority, Asst. Sec. for Rural Development, 7 CFR 2.70.)

Date: July 1, 1975.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.75-17469 Filed 7-3-75;8:45 am]

proposed rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1046]

[Docket No. AO–123–A42]

MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before July 22, 1975. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Preliminary Statement

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Louisville, Kentucky, on December 18, 1974, pursuant to notice thereof which was issued November 29, 1974 (39 FR 41986).

The material issues on the record of the hearing relate to:

1. Pool plant qualifications.
2. Diversion of producer milk.
3. Partial payments to producers and cooperatives.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pool plant qualifications.* (a) *Automatic pool status in March-August for a country plant that qualified as a pool plant each month in the preceding September-February.* The provision providing automatic pooling status during the flush production months, for supply plants which met the specified performance standards in each of the short production months, should be retained. However, the months of September through February should be substituted for the present October through March qualifying period for automatic pooling status in other months.

The order now provides that a supply plant may qualify as a pool plant by specific performance in any month. During the months of October through March shipments of at least 50 percent of dairy farm receipts must be made to city (distributing) plants. In the months of April through September a 40 percent shipment is required. Under the automatic pooling provision, a plant that qualified in each month of the preceding October–March period need ship no milk in April–September to be pooled in these months.

A cooperative's proposal, which was supported by a second cooperative, would eliminate automatic pooling and condition the pooling of a supply plant on performance each month. Proponent contended there is no need for automatic pooling of supply plants in the market because distributing plants can be adequately supplied with milk shipped directly from dairy farms. The recent association of a supply plant with the market had prompted the proposal to eliminate automatic pooling.

The cooperative alleged that the operator of the supply plant, which began operating in October 1974, was attempting to take advantage of the automatic pooling provision to facilitate pooling a supply of milk that would be used primarily for manufacturing. The supply plant operator denied any intent to exploit the pool. He stated that milk associated with the supply plant is and would be available to distributing plants and that substantial quantities of the supply plant's dairy farm receipts were being shipped to distributing plants. In November 1974, 70 percent of the supply plant's milk was shipped to a distributing plant.

The supply plant operator (a proprietary handler) and other handlers opposed the cooperative's proposal. They contended that elimination of automatic pooling would force a supply plant operator to make uneconomic movements of milk to qualify it for pooling in the months of heavy production. The operator of the distributing plant that receives milk from the supply plant contended that he depends on the supply plant as a dependable source of supply for his Class I needs.

Provisions for pooling supply plants and for automatic pooling of such plants in certain months are customarily included in Federal milk orders. Such provisions allow a distributing plant operator to elect whether to receive his milk supply directly from producers' farms and/or from supply plants. A distributing plant operator may utilize supply plant milk as his sole source of supply or to meet his plant's supplemental needs.

Even though a supply plant may not be needed to accommodate the orderly movement of milk to the market from farms in the immediate production area, such a plant may be needed for the assembly and movement of milk from alternative supply sources. To this end, it is essential that the order recognize the role of supply plants in a marketing system and present the conditions for pooling such plants.

It is probable that the demand for milk from a supply plant would vary seasonally and would be greatest during the season of lowest production. This would be particularly true in situations where handlers using supply plant milk were receiving part of their supply direct from producers' farms. During the months of flush production, supplies of milk received directly at fluid processing plants in the market might be sufficient to supply their ClassI requirements. If this were the case, it would be more economical to leave the more distant milk in the country for manufacturing and utilize the nearby milk for Class I use. Performance standards under the order should not force milk to be transported to distributing plants during the flush production months for the single purpose of maintaining eligibility for pooling.

September–February should replace October–March as the qualifying period for a supply plant to earn automatic pooling in the following months of seasonally higher production. As adopted in this decison, such change gives appropriate consideration to the current seasonality of production for the market. September–February is the 6-month period when milk production is substantially lower relative to demand than in the remaining months of the year. In September 1973 through February 1974, the most recent such 6-month period for which data were available at the hearing, Class I utilization of producer milk was 81 percent. In the following 6 months, March–August 1974, the comparable Class I utilization percentage was 64 percent.

March, which is replaced with September as a qualifying month for automatic pooling, is now a month of relatively high production relative to demand. For the

years 1972, 1973, and 1974, Class I utilization of producer milk in March averaged 70 percent, a percentage generally representative of that in the months of seasonally high production for the market.

The September Class I utilization of producer milk averaged 81 percent for 1972, 1973, and 1974. This is the same as the Class I utilization for the 6-month period of seasonally low production. It is therefore appropriate that September be included in the 6-month qualifying period for a supply plant to qualify for automatic pooling in the subsequent flush production months.

The proposal to require a supply plant to ship 50 percent of its receipts to distributing plants to qualify for pooling in any month is denied. In view of the variation in Class I utilization as between the short production and flush production months there is no demonstrated need for more stringent shipping requirements in the flush production months. The present 40 percent shipping requirement for pooling in April–September (which would apply during March–August as adopted herein) is adequate to establish a supply plant's association with the fluid market during the months when milk production is greatest relative to Class I use.

According automatic pool status to a qualified supply plant recognizes the plant's role in facilitating the disposition of its dairy farmer receipts in the months of heavy production. Such plant's dairy farmer receipts normally would be from its regular patrons, those who had delivered to the plant during the preceding September–February and established their bona fide association with the fluid market.

Under present order provisions, however, a supply plant that has automatic pooling in March–August could attach to the pool in those months additional supplies of milk without an established association with the market and intended solely for manufacturing use. This would result in an unwarranted reduction in returns to those established producers who are the regular suppliers of the market's fluid needs.

To preserve the integrity of regulation, the order should provide a safeguard against the possibility of such exploitation of the pool. It was suggested at the hearing that milk to be pooled in March–August by a supply plant with automatic pool status be limited to the milk of those dairy farmers whose total production was pooled at the supply plant in the preceding September–February. Such a stringent measure is not necessary to prevent the pooling of that milk without an established association with the market.

Under conditions in this market, it is appropriate to require that milk pooled by a supply plant during the months when it has automatic pool status be limited to receipts from dairy farmers who had at least 60 days' production pooled under the Louisville-Lexington-Evansville order in the preceding September–February. Receipts at a supply plant pooled on the basis of its acquired automatic status, other than from producers, would be other source milk and would not be pooled. Milk from dairy farmers not previously associated with the market would, of course, be pooled in any month that the supply plant met the shipping requirements for pool plant status for such month.

(b) *Elimination of automatic pooling for a country plant operated by a cooperative.* The according of automatic pool plant status in subsequent months to a plant that qualified for pooling as a balancing plant in the preceding October through February should be discontinued.

The order now provides for pooling as a balancing plant a country plant operated by a cooperative in any month that two-thirds or more of its producer member milk is delivered to pool plants of other handlers, either directly from the members' farms or by transfer from the cooperative's plant. A plant that so qualified in October through February thereby obtains automatic pool plant status for the following March through September.

A cooperative that operates the only balancing plant in the market proposed elimination of automatic pooling for such a plant. A second cooperative supported the proposal. Both cooperatives maintained that this automatic pooling provision serves no purpose and provides a means whereby milk not in fact associated with the market could nevertheless be pooled. Proponent cooperative indicated that its ability to pool its members' milk would not be jeopardized if the proposal was adopted.

The cooperative's balancing plant, which is located in the city of Louisville, provides a means whereby handlers may adjust their receipts each day to fit their bottling needs and at the same time have assurance that milk will be available for fluid use as needed.

A bottling plant that receives milk by direct delivery from the farms of designated producer members of the cooperative may accept part or none of such deliveries on any day. The total deliveries of such producers on the days the bottling plant is not operated, and the amount in excess of its Class I needs on other days, may be received at the cooperative's plant. Thus, its basic function is as an assembly point for producer milk not needed by handlers, which generally must be disposed of to nonpool plants. However, milk in storage at the plant is available to meet handlers' unanticipated requirements on short notice.

Providing pool status for the cooperative's plant on the basis of monthly performance enhances operating efficiency and implements the pooling of the cooperative's member milk that is regularly and substantially associated with the market. The monthly performance standard now provided in the order is adequate to achieve this end.

2. *Diversion of producer milk.* During the months of March through August a producer should be required to deliver at least 2 days' production (one delivery for a producer on every-other-day pickup) to a pool plant during the month to qualify any remainder of his monthly production for pooling as milk diverted to a nonpool plant. In September–February, monthly diversions of a producer's milk to a nonpool plant should not exceed 22 days' production (11 every-other-day pickups).

The present order limits diversion of a producer's milk to nonpool plants to 22 days in October, November, January, and February. There are no limits on diversions to nonpool plants in other months.

A cooperative proposed that a producer be required to deliver to pool plants during the month 20 days' production in September–February and 10 days' production in March–August to qualify his remaining monthly production for diversion to nonpool plants. It also proposed that a cooperative be allowed to divert to nonpool plants the total monthly production of individual producers in March–August if the cooperative's total milk so diverted is not more than one-third of its total producer milk for the month. This option would likewise apply to a proprietary handler for his nonmember milk.

Another cooperative proposed that at least 4 days in September-February and 2 days in March-August of a producer's monthly production be delivered to a pool plant to qualify his remaining production for diversion to a nonpool plant.

The cooperatives contended that present provisions (unlimited diversions to nonpool plants in March through September and in December, and diversion of 22 days' production in October, November, January, and February) provide a means for handlers to associate with the market milk intended primarily for manufacturing purposes to the detriment of producers who regularly supply the market and on whom the market depends for its Class I needs. They urged the adoption of substantial delivery requirements to deter this result.

The cooperative that proposed requiring the delivery to a pool plant of at least 4 days of a producer's monthly production to establish diversion eligibility for his remaining monthly production in September-February claimed that such requirement would be adequate to demonstrate that the milk was available for fluid use and was associated with the market. However, there was no showing that any purpose would be served by adopting a lesser standard than is now provided in the order for the months of seasonally low production.

Proprietary pool plant operators opposed changing the diversion provisions. One opposed not only the proposed diversion limitations, but also the addition of September and December to the designated months during which diversion limits are more restrictive than in other months. He contended that adoption of the cooperative's proposals would cause numerous dairy farmers to lose pool status for their milk, particularly in December, when schools are closed for 12 days. He also contended that September, because it is a summer month, should not be included in the designated months in which the more restrictive diversion limits are applicable.

A handler who operates a pool distributing plant and a separate plant for processing milk into Class II products opposed the proposed limits on diversions to nonpool plants. He contended that their adoption would force him to receive milk needed for Class II uses at his pool plant and then transfer it to his other plant, rather than diverting it to such plant as he is generally able to do under the present order.

A supply plant operator stated that the cooperatives' proposed limitations on diversions to nonpool plants were punitive in effect and would negate the purpose of the diversion provisions.

The diversion provisions are provided to implement the efficient handling of the market's milk supply in excess of handlers' immediate requirements. Because of variations in market needs and in production, the milk of each producer may not be needed every day for processing as fluid milk at the plant to which it is customarily delivered. It is necessary, however, that there be a reserve of qualified milk available for the fluctuating needs of handlers serving the market. When milk of any dairy farmer regularly supplying the market is not needed at the plant to which it is usually shipped, it can be handled most economically by diversion directly from the farm to nonpool, manufacturing plants.

In October, November, January, and February, when diversion of a producer's milk to a nonpool plant may not exceed 22 days (11 days in the case of every-other-day delivery), at least 8 days' production in a 30-day month would be delivered to a pool plant. To replace this standard with a requirement that 20 days of a producer's monthly production in the fall and winter months must be delivered to pool plants, as proposed by one cooperative, would be a deterrent to efficient handling of that milk in excess of handlers' needs.

In March-August, it is reasonable to require that 2 days' production of a producer be physically received at a plant in any month that his milk is diverted to a nonpool plant. This requirement will provide a means for establishing that milk of individual dairy farmers reported as diverted producer milk is associated with the market and is, in fact, milk which is qualified for fluid use. With the flexibility that this provides, in March-August there is no need to provide an optional method of computing allowable diversions based on aggregate milk deliveries.

Both proponents of diversion provisions different from those now in the order proposed that the more stringent limits be applicable for September-February rather than for the 4 months now specified. The months of September-February are the months when production is lowest relative to Class I utilization. It is therefore appropriate to designate these six months as the period in which the diversion of milk to nonpool plants is more limited than in other months.

The cooperatives' concerns are directed to the possibility that proprietary handlers might use the diversion provisions as a means of associating with the pool additional milk intended solely for manufacturing use. While this could possibly result, it is not practical to deal with such a matter without more specific facts.

Certainly milk which is not available for fluid use should not be accorded pooling eligibility. However, it is not apparent from the record that this has happened. Proponents apparently foresee possible market developments which they believe could be detrimental to their interest. Through a cooperative's balancing plant, it has flexibility not available to proprietary handlers for marketing its member's milk. It would not be appropriate to adopt restrictive requirements which could deter the efficient handling of the market's total supply.

The operator of a supply plant should be permitted to divert only to nonpool plants and such diversions should be included as a receipt at the supply plant in determining its pool status. The order now specifies that milk may be diverted from a pool plant to another pool plant on any number of days in any month. However, since a supply plant's pooling status is determined on the basis of its transfers to distributing plants, it would not be practicable for a supply plant to move milk to pool plants by diversion. No useful purpose therefore is served by providing diversion privileges to pool plants for a supply plant.

The hearing notice stated that because some proposals applicable to diverted milk would be considered, the point of pricing diverted milk would also be considered. Diverted milk now is priced at the location of the pool plant from which diverted.

A pending request for a hearing includes proposals to change the Class I price and location adjustment provisions of the order. The issue of the location at which diverted milk is priced would be more appropriate for consideration at such a hearing. Accordingly, no action is taken with respect to the point of pricing diverted milk on the basis of this proceeding.

3. *Partial payments to producers and cooperatives.* The rate at which partial payments for producer milk are made should be changed from the Class III price for the preceding month to 90 percent of the weighted average price for the preceding month. Also, handlers should make a partial payment at the same rate for milk received during the first 15 days of the month from a cooperative bulk tank handler.

The present order requires handlers to pay by the last day of the month for milk received during the first 15 days of the month from producers who did not discontinue delivery of milk to such handler during the month. The rate of payment is the Class III price for the preceding month. Payments to cooperatives authorized to collect payment for their members are due 2 days prior to the last day of the month.

A cooperative proposed that handlers be required to make separate partial payments for producer milk received during each of the first two 10-day delivery periods of the month. Under their proposal these payments to individual producers would be due on the 17th and 27th of the month, respectively, at 90 percent of the previous month's weighted average price, and to cooperatives collecting for their member producers at least 2 days earlier. Partial payments for milk received from a cooperative bulk tank handler during the same two 10-day delivery periods would be due on the 17th and 27th days of the month. The rate for such payments would be the same as that applicable for partial payments to producers.

Proponent cooperative's spokesman recognized that the proposed changes would increase handlers' costs for milk, but held they are needed to improve the cash flow to dairy farmers. He contended that dairy farmers, faced with increasing production costs and greater demands for cash for purchasing items needed to continue producing milk, urgently need payment for their milk at a higher rate and at more frequent intervals. Higher interest rates in the last two years were cited in particular as justifying more frequent payments to producers.

The proposed partial payment rate (90 percent of the previous month's weighted average price) is desirable, the cooperative claimed, because it would increase the amount of money dairy farmers would receive as partial payments. Also, according to proponent's spokesman, it would reduce the risk carried by producers in situations where a handler suddenly is unable to pay for milk.

At the hearing another cooperative proposed that the partial payment rate be either 90 percent of the preceding month's uniform price or the Class III price for the preceding month, whichever is higher. The same cooperative opposed requiring two partial payments based on 10-day delivery periods. It proposed instead that the present single partial payment date requirements be advanced three days and be paid to producers who delivered milk to handlers at least 20 days during the month.

The cooperative's spokesman argued that the higher rate is necessary to more nearly represent the actual value of the milk. He contended that the present partial payment rate is disproportionate to the actual value of the milk and that producers should receive the partial payment at the earliest practicable date. However, this cooperative opposed more frequent partial payments on the basis that it would impose considerable additional costs on all parties and therefore would not be advantageous to producers.

Increasing the partial payment rate to 90 percent of the previous month's weighted average price, as adopted herein, will provide producers a larger portion of the value of their milk through partial payments. For the two years ending November 1974, the proposed 90 percent rate averaged 8.9 cents per hundredweight more than the actual partial payment rate.

Since the partial payment applies only to the first 15 days' deliveries by producers who had not discontinued shipping by the payment date, the likelihood of overpayment will not be significantly increased. The record provides no basis for concluding that the present arrangement, whereby a producer must not have discontinued delivery of milk by the date partial payment is made, is inappropriate. Accordingly, no action is taken to change the number of days a producer must deliver milk to a handler to receive the partial payment.

It is not apparent that any purpose would be served by advancing the date for making partial payments or by providing that the partial payment rate be not less than the Class III price for the preceding month. Although it was suggested that such modifications of the proposal are feasible, no specific testimony was presented to justify such changes.

Milk that a cooperative delivers to plants of other handlers in its capacity as a bulk tank handler is direct-shipped from producers' farms to the handlers' plants. Under the present order the plant operator is required to pay the cooperative at the applicable class prices for such milk by the 10th day of the following month. Since milk so received at a plant is essentially the same as milk that the plant operator receives directly from dairy farmers for his own account, the order should require handlers to make a partial payment for such milk received during the first 15 days of the month. Otherwise, to the extent that a plant operator receives his milk supply through a cooperative bulk tank handler, he enjoys a competitive advantage over other handlers that receive their milk as producer milk for which a partial payment is required.

As proposed, the partial payment rate adopted will exclude the effect of the takeout-pay back (Louisville) plan money on the uniform price in the pay back months. This would be accomplished by requiring partial payment for producer milk deliveries during the first 15 days of the month at 90 percent of the previous month's weighted average price in August through March. For April through July the rate would be 90 percent of the weighted average price for the preceding month less the Louisville plan takeout rate for the current month. Otherwise, there would be an increased likelihood that the actual value of the milk would be overstated in the partial payments.

There was no specific opposition to the proposed 90 percent of the previous month's uniform price as the partial payment rate. Although handlers opposed changing the partial payment procedure, their testimony was directed to the proposal for requiring two partial payments.

The basis of handler opposition was that the reasons cited by proponent for needing more frequent partial payments reflect general business conditions facing handlers and producers alike. Handlers' representatives contended the order should not be changed to recognize producers' problems at the expense of handlers.

Handlers claimed that two partial payments for a larger volume of producer milk at a higher rate, as proposed, would increase their costs for milk. In addition to requiring more frequent cash outlays, administrative costs related to making more frequent payments would increase as well, according to their spokesmen. They also contended that adoption of the proposal would impose a burdensome time schedule on handlers during the first 15 days of the month, and would increase the likelihood of overpayments to producers who did not ship milk the entire month.

Providing an additional advance payment date would, as opponents indicated, increase handlers' costs and would not in any way change the total monies producers would receive in a 30-day period.

The Milk Industry Foundation, a national trade association of milk processors, opposed the proposal for two partial payments and stated that its adoption would result in added costs to handlers. It took the position that any changes to be made in payment dates or procedures should be applicable on a uniform basis in all Federal orders.

The increasing risk of loss of money among producers through handler failure is a matter of concern. However, if a second advance payment is desirable for this purpose, it is clear that such procedure would be helpful in other orders also. The added cost and time demands involved are a significant impediment to adoption. This is not a matter that can be resolved easily. It should be explored carefully in depth and in conjunction with other alternative actions with a broader segment of the industry.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1046.7, paragraphs (b), (c), and (d) are revised as follows:

§ 1046.7 Pool plant.

* * * * *

(b) A country plant during any of the months of September through February from which not less than 50 percent, and during other months not less than 40 percent, of milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at, or diverted from such plant pursuant to § 1046.13, is transferred to and received at a city plant(s) in the form of milk or skim milk.

(c) In March through August a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding September through February, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through August next following.

(d) A country plant that is operated by a cooperative association if two-thirds or more of the milk from persons described in § 1046.12(a)(1) who are members of such association is delivered during the month from farms to the pool plant(s) of other handlers or transferred by such association from its plant to the pool plant(s) of other handlers.

* * * * *

2. In § 1046.12, paragraphs (b) (2) and (3) are revised and a new paragraph (b) (4) is added as follows:

§ 1046.12 Producer.

* * * * *

(b) * * *

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1046.44(a)(8)(iii) and the corresponding step of § 1046.44(b);

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(4) A person with respect to any milk produced by him that is received at or diverted from a country plant in any month of March through August, unless at least 60 days' production from the farm of such person was producer milk during the preceding September through February or unless such country plant is a pool plant for the month pursuant to § 1046.7(b).

3. In § 1046.13, paragraphs (b) and (c) are revised as follows:

§ 1046.13 Producer milk.

* * * * *

(b) Diverted by a handler from a pool plant pursuant to § 1046.7(a) to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted.

(c) Diverted by a handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Milk so diverted shall be deemed to have been received at the pool plant from which it is diverted;

(2) Not less than 2 days' production of a producer whose milk is diverted to a nonpool plant is physically received at a pool plant during the month;

(3) Producer milk pursuant to this paragraph shall not include the milk of any person during September through February on days that it is diverted by a handler to a nonpool plant in excess of 22 days (11 days in the case of every-other-day delivery) during the month; and

* * * * *

4. In § 1046.44, paragraph (a)(7)(v) and (vi) are revised and a new paragraph (a)(7)(vii) is added as follows:

§ 1046.44 Classification of producer milk.

* * * * *

(a) * * *

(7) * * *

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of milk from a dairy farmer described in § 1046.12(b)(4);

* * * * *

5. In § 1046.60, paragraph (d) is revised as follows:

§ 1046.60 Handler's value of milk for computing uniform price.

* * * * *

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1046.44(a)(7)(i) through (iv) and (vii) and the corresponding step of § 1046.44(b), excluding receipts of bulk fluid cream products from an other order plant;

* * * * *

6. In § 1046.73, paragraphs (a) and (f) are revised as follows:

§ 1046.73 Payments to producers and to cooperative associations.

* * * * *

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, at not less than the applicable rate pursuant to paragraph (a)(1) and (2) of this section without deductions for hauling:

(1) In August through March, 90 percent of the weighted average price for the preceding month; and

(2) In April through July, 90 percent of the weighted average price for the preceding month minus the applicable rate per hundredweight described in § 1046.61(g).

* * * * *

(f) Each handler shall pay to the cooperative association for milk received from it as a handler described in § 1046.9(c) as follows:

(1) On or before 2 days prior to the last day of the month for milk received during the first 15 days of the month, an amount computed at not less than the applicable rate pursuant to paragraph (a) of this section; and

(2) On or before the 10th day of the following month for milk received during the month an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74, that are applicable at the location of the receiving handler's pool plant, less the payment made pursuant to paragraph (f)(1) of this section.

Signed at Washington, D.C., on June 30, 1975.

JOHN C. BLUM,
Associate Administrator.

[FR Doc.75-17459 Filed 7-3-75;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 216]

MARINE MAMMAL PROTECTION

Proposed Waiver of Moratorium on Importations, Proposed Regulations To Govern Such Importation, and Notice of Hearing

Section 101(a)(3)(A) of the Marine Mammal Protection Act of 1972 (the Act), 16 U.S.C. 1361 et seq., authorizes and directs the Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission to determine when, to what extent, if at all, and by what means, it is compatible with the Act to waive the requirements of section 101 which established a moratorium on the taking and importation of marine mammals (for the purposes of the Act the term marine mammal includes any part of any such marine mammal including its raw, dressed or dyed fur or skin), with certain exceptions. The Secretary's authority to waive the moratorium has been delegated to the Director, National Marine Fisheries Service.

The Fouke Co., Greenville, South Carolina, has requested that the Director waive the moratorium on importation to the extent that 70,000 Cape fur seal skins (*Arctocephalus pusillus pusillus*) from the 1975 South African harvest may be imported.

Based on the scientific evidence before the Director at this time and representations made by the Republic of South Africa regarding its intent to meet U.S. requirements, the Director, National Marine Fisheries Service, is considering whether to waive the moratorium to allow limited importation of skins from Cape fur seals.

Section 103(d) of the Act provides that any determination to waive the moratorium and the promulgation of any regulations incidental thereto must be made on the record after opportunity for an agency hearing.

In this connection, 50 CFR 216.73, which implements in part section 103 of the Act, requires that the following information be provided:

(1) The nature of the hearing: A hearing on the record will be held, presided over by an Administrative Law Judge, to consider a waiver of the moratorium on the importation of skins of Cape fur seals taken from each annual harvest by or conducted under the auspices of the Republic of South Africa commencing with the 1975 harvest, and the regulations governing said importation.

(2) The place and date of the hearing. The date shall not be less than 60 days after publication of the notice of the hearing: A public hearing is scheduled to be held on September 18, 1975, at 9:30 a.m. in the Penthouse Conference Room, Page Building No. 1, at 2001 Wisconsin Avenue NW., Washington, D.C., in conformance with hearing procedures published in 40 FR 10182 (March 5, 1975).

(3) The legal authority under which the hearing is to be held: The Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 et seq., and regulations promulgated thereunder, 40 FR 10182 (March 5, 1975).

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373 (d)):

A. PROPOSED WAIVER

The Director proposes to waive the moratorium on the importation of Cape fur seals (*Arctocephalus pusillus pusillus*) to the following extent and under the following conditions:

a.[1] ——— skins of Cape fur seals taken from each annual harvest, commencing with the 1975 harvest, by or conducted under the auspices of the Republic of South Africa, may be imported, provided that the Director upon annual review determines that conditions so warrant continuation of the waiver;

b. The skins were taken from Cape fur seals which at the time of taking were not

1) Nursing (nursing means nursing which is obligatory for the physical health and survival of the animal),

2) Pregnant, or

3) Less than eight months old; and

c. The taking was in a manner not deemed inhumane by the Director.

The determination on the waiver and the extent of the waiver will depend, in part, on the acceptability of the management program of the Republic of South Africa, how the allowable harvest under that program relates to the optimum sustainable population of the Cape fur seal and what effect, if any, a waiver of the moratorium will have on the allowable harvest. Consequently, the extent of a waiver, i.e., the number of skins will be determined on the basis of the evidence on the hearing record.

B. PROPOSED REGULATIONS

It is proposed to amend Part 216 of 50 CFR, Regulations Governing the Taking and Importing of Marine Mammals, by adding to § 216.32, which was previously reserved, the following:

Section 1—*Purpose*. The Director, on ————, waived the moratorium on the importation of skins from Cape fur seals (*Arctocephalus pusillus pusillus*), harvested by or conducted under the auspices of the Republic of South Africa subject to certain conditions and limitations. The purpose of these regulations is to establish the criteria, conditions and procedures for importing said skins.

Sec. 2—*Scope*. This section applies to the importation of skins from Cape fur seals which are subject to the waiver by the Director.

Sec. 3.—*Definitions*. In addition to the definitions contained in the Act, these regulations, and unless the context otherwise requires, in this section:

a. "Cape fur seals" means fur seals scientifically designated as *Arctocephalus pusillus pusillus*.

b. "Nursing" means nursing which is obligatory for the physical health and survival of the nursing animal.

Sec. 4—*Prohibitions*. It is unlawful to import skins from Cape fur seals except under the following circumstances:

a. Such importation is pursuant to a permit issued by the Director in accordance with these regulations;

b. Any skins imported are accompanied by a Certification by the Minister of Fisheries, Republic of South Africa, in such form as the Director shall approve, to the effect that such skins are from Cape fur seals which:

(a) Were taken in a humane manner as determined by the Director;

(b) Were taken from an annual harvest which did not exceed ——— Cape fur seals;

(c) Were taken under a management program which is designed to maintain a population consistent with the purposes and policies of the Act;

(d) Were not pregnant, nursing, or less than eight months old at the time of taking; and

(e) The factual basis, in accordance with section 6, for the conclusion that such Cape fur seals were not nursing or less than eight months of age at the time of taking.

Sec. 5—*Importation permits*. a. The Director may issue permits authorizing the importation of Cape fur seals. Any person desiring to obtain such a permit may make application to the Director. In the event more than one complete application is received within the 30 days immediately following the date of promulgation of these regulations and the total number of skins requested by the applicants exceeds ———, the Director may equitably apportion among the applicants, on the basis of all the evidence, the number of skins authorized to be imported. The sufficiency of the application shall be determined by the Director and, in that connection, he may waive any requirement for information contained therein, or require any elaboration or further information deemed necessary. An application for a permit will include:

(1) Name and address of applicant;
(2) Month and year of taking;
(3) Purpose of importation;
(4) Quantity to be imported;
(5) Proposed date of importation;
(6) Proposed place of importation;
(7) Method of shipment;
(8) Evidence of a commitment from the Republic of South Africa that the applicant will obtain the number of skins stated in the application;
(9) The following certification:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972; and

(10) Signature of the applicant.

b. Permits applied for under this section shall be issued, suspended, modified, or revoked, pursuant to § 216.33.

c. Permits applied for under this section shall contain terms and conditions as the Director may deem appropriate, including:

(1) The number of skins which are authorized to be imported;
(2) The location from which they may be imported;
(3) The period during which the permit is valid;
(4) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;
(5) The transferability or assignability of the permit;
(6) The sale or other disposition of the skins; and
(7) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

d. When the total number of skins authorized to be imported from a particular yearly harvest reaches ——— skins, no more permits will be issued for the importation of skins from that harvest.

Sec. 6[2]—*Taking*. The taking of any Cape fur seal after [————————] in any given year which is not of black pelage shall be conclusive proof that said Cape fur seal was not nursing or less than eight months of age at the time of taking. As to other skins, an applicant for a permit shall have the burden of establishing, by biological data or physical characteristics acceptable to the Director, that individual Cape fur seals taken prior to [————————] were not nursing or less than eight months of age at the time of taking.

The final format for § 216.32 has not been determined. If these proposed regulations are published as final regulations, the section numbers will in all probability change.

C. REQUIRED STATEMENTS

Section 103(d) of the Act requires that the following statements be published in the FEDERAL REGISTER at this time:

(1) A statement of the estimated existing levels of the species and population stocks of the marine mammal concerned: The existing population of the Cape fur seal is conservatively estimated to be 1,000,000. This estimate is based on the following information: The only documented figures for the population size

[1] As noted, the Fouke Company has requested that the moratorium on importation as it applies to Cape fur seals be waived to the extent that 70,000 skins may be imported.

[2] In Section 6 of the proposed regulations a date beyond which the time of taking is conclusive proof that the Cape fur seal taken was neither nursing nor less than eight months old, was not set forth. Based on the fact that the Marine Mammal Commission has not yet had an opportunity to fully comment, nor has the public had an opportunity to comment, establishing a firm date has been deferred. A date will be determined based on the best scientific evidence presented by the hearing record.

of the Cape fur seal are those given by Robert Rand (1972). Rand's population estimate of 19,500 mature bulls and 273,000 cows was obtained from a combination of counts of harem bulls from aerial photographs, catch statistics and and estimated harem size. Dr. Peter B. Best, Senior Professional Officer, Cape Town, Republic of South Africa, (1973), using Rand's data and recent data from tagged pups, concluded that between 250,000 and 300,000 pups are probably born each year. Using a ratio of pups to population size of 1:4, (the ratio used for Northern fur seals on the Pribilof Islands), we estimate a total population of 1 to 1.2 million seals.

(2) A statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock: The proposed regulations relate to requirements regulating importation of Cape fur seals. They do not directly address the number of seals to be taken. There is indication that a decision to waive the moratorium will not have an impact on the number of Cape fur seals harvested. Consequently, it appears at this time that the regulations may not have direct impact on the optimum sustainable population of said species. However, in view of the fact that it would be inappropriate to allow importation of a harvest that had adversely affected the population, the number of animals to be harvested and the effect of that harvest on the population will be discussed.

Best (1973) stated that based on an estimated 250,000 to 300,000 pups born each year, and a total number of 70,000–80,000 yearlings killed each year, the harvest represents between 23 percent and 32 percent of the number of pups born each year.

The management policies of the Republic of South Africa to harvest yearling seals (between 23 percent and 32 percent of the number born each year) are maintaining the breeding populations at current levels. Furthermore, there appears to be adequate recruitment to the population from unharvested yearlings and from unharvested rookeries to maintain or increase recent populations. Thus, a South African harvest in 1975 of 70,000 first year animals should maintain the population at its present level. A determination as to whether the present population level is the optimum sustainable population will be based on the evidence in the hearing record.

(3) A statement describing the evidence before the Director upon which he proposes to base such regulations: The proposed regulations are designed to ensure that those skins to be imported were not: (a) taken in a manner deemed inhumane; nor (b) taken from animals which were pregnant, nursing or less than eight months of age at the time of taking. The evidence which supports the proposed regulations is the following:

a. Humaneness of the harvest. The South African Government has stated that it intends to meet United States standards of humaneness, and that it has implemented measures to meet those standards in 1975. Such measures include informing concessionaires that harvest procedures must meet new humaneness standards, purchasing equipment, providing inspectors, and implementing training arrangements for the sealing crews. Evidence of an improved harvest that can be considered humane will be obtained by inspection after the harvest begins. The South African Government intends to send officials to the United States to participate in any public hearing(s) by testifying on this and other related issues.

b. Nursing and eight months of age. An analysis by National Marine Fisheries Service scientists of the evidence presented in two recent papers by Drs. P. B. Best and P. D. Shaughnessy indicates that it is difficult to establish a date as to when obligatory nursing ceases or when pups are not less than eight months of age. The scientists did conclude that the estimates of Best and Shaughnessy of median pupping date (December 1), peak count (December 18) and probable cessation of pupping (few pups born after January 1) are accurate, based upon the acknowledged assumptions.

In their paper on nursing, Best and Shaughnessy state that "although the termination of nursing of an individual pup may be quite abrupt, brought about by rejection by the mother at the birth of a new pup in early summer, the actual stage at which weaning takes place on average or at which obligatory nursing ceases (if this occurs before weaning), is difficult to determine accurately without long-term observations of the behavior of a great number of individual pups. So far this has not been possible." However, Best and Shaughnessy have reported that: 1) the incidence of milk in stomachs of morning-caught pups apparently decreases dramatically from August to September and slightly further in October; 2) possibly ⅔ or more of the pup population is taking solid food in August, based on incidence of cestode infestation; 3) some pups undergo extensive migrations from their home rookery as early as July with the percentage apparently increasing each month into October; and 4) there is an apparent dramatic decrease in blubber weight of pups between October and November probably coinciding with weaning.

(4) Any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations: The following reports, letters, and studies relate to the establishment of regulations:

a. Draft Environmental Impact Statement (EIS), Consideration of Waiver of the Moratorium on the Importation of Cape Fur Sealskins. (Presently in preparation and will be available to the public upon completion.)

b. P. B. Best and P. D. Shaughnessy (1975), Nursing in the Cape Fur Seal, (*Arctocephalus pusillus pusillus*).

c. Fouke Company (3/17/75); Application for a Waiver of the Moratorium for the Importation of Marine Mammal Products pursuant to the Provisions of the Marine Mammal Protection Act of 1972.

d. Dr. Peter B. Best, 7/24/74, statement at public hearing, Greenville, South Carolina.

e. Sea Birds and Seal Protection Act, 1973, Republic of South Africa, May 21, 1973.

f. Robert Rand, The Case for Controlled Killing of the Cape Fur Seal, African Wildlife, Volume 27.

g. R. W. Rand, 8/18/70, Division of Sea Fisheries Investigational Report, No. 89, The Cape Fur Seal, Estimates of Population Size.

h. Walter Kirkness, 9/17/73 to 10/3/73, Observations of Fur Seal Management and Research Programs and Harvesting Conditions in South Africa.

i. L. E. McDonald, D.V.M., August, 1974, Report of Visit to South and South West Africa Fur Seal Harvest Sites.

j. W. M. Wass, Report of Observations in South and South West Africa during August, 1974.

k. Letter from Marine Mammal Commission dated May 29, 1974.

l. Letter from Marine Mammal Commission dated July 25, 1974.

m. P. B. Best, 1/26/73, Estimates of Pup Population Size and Sealing Rate at Cape Cross, S.W.A.

n. Public Hearing Record, Application for Economic Hardship Exemption, Fouke Company, Greenville, S.C., July 24, 1973.

o. Statement of policy National Marine Fisheries Service, 40 F.R. 17845, 4/23/75, which establishes a criteria of obligatory nursing.

p. P. D. Shaughnessy and P. B. Best, The Pupping Season of the Cape Fur Seal, (*Arctocephalus pusillus pusillus*).

(5) Issues of fact which may be involved in the hearing:

(a) Estimated existing population levels of Cape fur seals;

(b) The optimum sustainable population of such species;

(c) Anticipated effect of proposed regulations on the optimum sustainable population of such species;

(d) The humaneness of the harvest of such species;

(e) The date for harvesting which will ensure that for those Cape fur seals, the skins of which are to be imported, were not nursing or less than eight months of age at the time of taking and the biological data and physical characteristics acceptable in lieu of said date;

(f) Whether the South African management program is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of the Act.

(6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied:

A draft Environmental Impact Statement (EIS) of the proposed action will be available for public review on July 25, 1975, in the Office of the Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Page Bldg. 2, Washington, D.C. 20235.

(7) Any written advice received from the Marine Mammal Commission: The proposed waiver and regulations are being submitted to the Marine Mammal Commission for review. Any comments received will be submitted as direct testimony. The Commission's comments on

obligate nursing were previously summarized at 40 FR 17845, April 23, 1975. That summary is incorporated by reference.

(8) The place(s) where records and submitted direct testimony will be kept for public inspection: A public record of the proposed action, records and testimony will be maintained in the Office of the Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74:

Parties wishing to participate in the hearing must notify the Director, National Marine Fisheries Service, by certified mail, on or before August 15, 1975.

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required: Direct testimony on the proposed waiver and regulations must be received by the Director, National Marine Fisheries Service, not later than August 15, 1975 in original and 10 copies. The introduction of direct testimony as well as the procedural matters of the hearing will be governed by the regulations published on March 4, 1975 at 40 FR 10182.

(11) The docket number assigned to the case which shall be used in all subsequent proceedings: The docket number assigned to this case is MMPAH No. 1, 1975. This number will be used in all subsequent proceedings pertaining to this application.

(12) The place and date of the pre-hearing conference: A pre-hearing conference will be held at the Penthouse Conference Room, Page Building No. 1, at 2001 Wisconsin Avenue NW., Washington, D.C., on August 28, 1975.

Pursuant to § 216.90 of the hearing procedure regulations, the Director's decision on the waiver shall be published in the FEDERAL REGISTER. If the waiver is approved, such notice shall state the waiver conditions if any, and include the Director's certification that the South African program for taking of Cape fur seals is consistent with the provisions and policies of the Act. Regulations to govern the waiver and permits issued thereunder shall be published at the same time.

Dated: June 30, 1975.

JACK W. GEHRINGER,
Deputy Director,
National Marine Fisheries Service.

[FR Doc.75-17537 Filed 7-3-75;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1952]

APPROVED ARIZONA PLAN

Proposed Supplements

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 667), (hereinafter referred to as the Act) for the review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and Part 1902 of this chapter. On November 5, 1974, a notice was published in the FEDERAL REGISTER (39 FR 39037) concerning the approval of the Arizona plan and of the adoption of Subpart CC of Part 1952 containing the decision of approval. On May 14, 1975, the State of Arizona submitted various supplements to its plan involving developmental changes (see Subpart B of 29 CFR Part 1953) as described below.

2. *Description of the supplements.* The supplements submitted by the State concern the completion of certain developmental steps and changes in the implementation dates for other components of its plan.

The first supplement consists of the promulgation of State standards on March 1, 1975. The State has adopted the General Industry Standards of 29 CFR Part 1910, with the exception of the maritime standards of 29 CFR 1910.13 through 1910.16, and the construction standards of 29 CFR Part 1926. In addition, the State has promulgated standards for boiler and pressure vessels, adopting the A.S.M.E. Boiler and Pressure Vessel Code and the Arizona Boiler and Pressure Vessel Regulations; standards for elevators, adopting the ANSI Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks; and standards for personnel hoists, adopting the ANSI Safety Code for Personnel Hoists.

In addition, the State has promulgated regulations concerning inspections, citations and proposed penalties and recordkeeping regulations adopting 29 CFR Parts 1903 and 1904. However, the recordkeeping requirements will not be applicable to political subdivisions and employers with 10 or fewer employees until January 1977, as the State needs additional time to establish a universe file for political subdivisions and needs additional funds for printing and mailing the recordkeeping booklets. The State has also promulgated rules of procedure for hearings before the Governor's Review Board contesting citations and/or penalties. In addition, the State has submitted a State poster which is designed to inform employees of their protections and obligations under the Arizona program.

On March 20, 1975, the Industrial Commission entered into an agreement with the Arizona Department of Health Services for the concurrent responsibilty for all occupational safety and health issues with respect to sanitation requirements. The Industrial Commission had clinical laboratories. A copy of this agreement is included in the supplements. The Industrial Commission had intended to enter into an agreement with the Arizona Corporation Commission by March 1, 1975. It has experienced a delay in the finalizing of the agreement and intends to have the agreement finalized by August 1, 1975.

Because of the current economic conditions, the anticipated expansion of the Division of Occupational Safety and Health of the Industrial Commission will be diminished from the anticipated 60 personnel to 40 personnel.

3. *Location of the plan and its supplements for inspection and copying.* A copy of the plan and its supplements may be inspected during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N-3608, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Assistant Regional Director, Occupational Safety and Health Administration, Room 9470, Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102; and the Division of Occupational Safety and Health, Industrial Commission of Arizona, P.O. Box 19070, 1601, West Jefferson Street, Phoenix, Arizona 85005.

4. *Public participation.* Interested persons are hereby given until August 7, 1975 in which to submit written data, views, and arguments concerning whether the supplements should be approved. Such submissions should be addressed to the Associate Assistant Secretary for Regional Programs at his address as set forth above, where they will be available for inspection and copying.

Any interested person may request an informal hearing concerning the proposed supplements by filing particularized written objections with respect thereto within the time allowed for comments with the Associate Assistant Secretary for Regional Programs. If in the opinion of the Assistant Secretary substantial objections are filed, which warrant further public discussion, a formal or informal hearing on the subjects and issues involved may be held.

The Assistant Secretary shall consider all relevant comments, arguments, and requests submitted in accordance with this notice and shall thereafter issue his decision as to approval or disapproval of the supplements, make appropriate amendments to Subpart CC of Part 1952, and initiate further proceedings if necessary.

(Secs. 8(g), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 662))

Signed at Washington, D.C. this 30th day of June, 1975.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.75-17473 Filed 7-3-75;8:45 am]

Office of Federal Contract Compliance

[41 CFR Part 60-14]

CITY OF NEW YORK PLAN

Affirmative Action for Federally Involved Construction Contractors; Notice of Proposed Rulemaking

This notice of proposed rulemaking is issued under the authority of sections 201, 205, 207, 301, and 303 of Executive Order 11246 (30 FR 12319), as amended.

Section 201 of Executive Order 11246, as amended, provides that the Secretary

of Labor shall adopt rules and regulations necessary and appropriate to achieve the purposes of the Order. One of the purposes of Executive Order 11246, as amended, is to require Federal and Federally assisted construction contractors and subcontractors to "take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, religion, sex or national origin." (section 202(1)).

Notice is hereby given that the Secretary proposes to adopt a Revised New York Plan in order to further implement the affirmative action mandate of Executive Order 11246, as amended. If adopted it is proposed to make the Revised New York Plan effective thirty days from the date of its republication in the FEDERAL REGISTER.

Background. In 1970 the Board of Urban Affairs, an industry group representing construction contractors and building trades unions submitted an affirmative action plan to the Department of Labor for approval. The Department declined to approve the proposal in April of that year. Following negotiations between the Board of Urban Affairs, the City of New York, and the State of New York an agreement was achieved between the parties. Approval was implemented by executive orders of the Mayor of the City of New York (Executive Order No. 31) and the Governor of New York (Executive Order No. 43) in January, 1971. On August 11, 1971, the Office of Federal Contract Compliance announced its approval of the New York Plan as an acceptable affirmative action plan in compliance with the requirements of Executive Order 11246, as amended.

The New York Plan originally provided for on-the-job training for 800 minority workers with goals established on a trade-by-trade basis. The Plan expired on July 1, 1972, but was extended by agreement into 1973. The extended Plan was approved as an acceptable affirmative action plan by the Department of Labor in April, 1973. The extended Plan differed from the original Plan in that it provided for the training of 1,000 minority workers. Prior to the extension of the New York Plan, the City of New York withdrew from the Plan and on July 20, 1973, promulgated its own plan, which is known as the "Mayor's Plan."

The New York Plan was scheduled to expire on August 1, 1974, but was extended until December 1, 1974. The purpose of this extension was to provide the Department of Labor with ample time to explore the possibility of replacing the New York Plan with a broader hometown plan which addressed the entire problem of underutilization in the New York City construction industry.

Beginning in January 1, 1974, the Department attempted unsuccessfully to encourage representatives of labor and management to establish a more acceptable voluntary affirmative action plan. However none was forthcoming. Accordingly, on November 30, 1974, the Department announced that no further extensions of the New York Plan would be granted. Instead, all Federal and Federally assisted construction contractors performing work in the City of New York became subject to the mandatory affirmative action requirements set forth in Part II of the Federal EEO Bid Conditions. Responsibility for compliance with the Part II requirements is imposed directly on the individual contractors, as to their respective work forces, rather than on the trade as a whole. Part II of the New York Federal EEO Bid Conditions expires on July 1, 1975. Therefore, it is necessary to establish new standards for compliance with Executive Order 11246, as amended, in the City of New York construction industry.

General findings. Executive Order 11246, as amended, is designed to make equal employment opportunity a reality for present and potential employees of Federal and Federally assisted construction contractors and subcontractors. The contract compliance program is premised on the right and the responsibility of the Federal Government to determine the terms and conditions upon which it will contract with private parties for the procurement of supplies and services, including construction, essential to the functioning of Government. Under Executive Order 11246, as amended, Federal and Federally assisted construction contractors are obliged to forbear from employment discrimination based on race, color, religion, sex; or national origin, and to take affirmative action to ensure that employees and applicants for employment are treated without regard to these non-merit factors. This obligation is embodied in Section 202 of Executive Order 11246, as amended, and is commonly referred to as the Equal Rights Employment Opportunity Clause. The Executive Order's affirmative action requirement is intended to ensure prompt achievement of full and equal employment opportunity through the establishment of specific and results-oriented procedures.

Computation of goals for minority utilization.—In order to give form and content to the affirmative action obligation of Executive Order 11246, as amended, the Department of Labor developed the concept of goals and timetables. In computing goals for minority manpower utilization, the Department has attempted to rely upon the most precise standards and statistics available. In assessing whether a goal for minority manpower utilization is reasonable, the Department of Labor is guided by the principle that the objective of a goal is to place eligible minority members in the position which they would have enjoyed if not for underutilization in the past. The Department believes that statistics with respect to the labor force available in the 1970 Census are a reasonable measure of the relevant minority labor force which, but for underutilization, would be equally represented in the City of New York construction industry. Even though the labor force statistics in the 1970 Census reflect persons who were 16 years of age and over in 1970, such persons are now at least 18 years of age and are eligible for consideration for employment in the construction industry. Data is available on the black, Oriental, American Indian, and Puerto Rican civilian labor force in the City of New York but there are no labor force statistics collected by the Bureau of the Census on Spanish surnamed individuals in the City of New York. Therefore, absolute precision is not possible. However, statistics on non-Puerto Rican Spanish surnamed individuals in the labor force can be estimated from data compiled for the Spanish language[1] population of the city. To determine the labor force statistics on the Spanish language force, it is necessary first to determine the ratio of the number of Spanish language individuals in the City of New York to the number of Puerto Rican individuals in the city, and then to multiply the number of Puerto Ricans in the labor force by the resulting ratio.

It is also necessary to consider the percentage of persons of Spanish origin in the labor force in the City of New York who regard themselves as being black rather than white. Otherwise, certain individuals will be counted twice, once as black and once as a member of the Spanish origin group, resulting in an artificially inflated statistic.

Taking into account these basic factors, the number of minorities in the labor force in the City of New York may be derived by adding the black (620,220), Oriental (39,764) and American Indian (4,298) labor forces, together with the number of Spanish language persons in the labor force. This number is calculated by multiplying the Puerto Rican labor force (229,895) by a ratio resulting from dividing the number of persons in the Spanish language group in the population (1,278,630) by the number of Puerto Ricans in the population (811,-843). This result (376,087) is then reduced by the percentage of Spanish language individuals in the area who count themselves as white rather than black (11.6 percent). Based upon these calculations, the non-white Spanish language labor force of New York City is estimated to be 332,461. The percentage of minorities in the labor force results from dividing the total minority labor force (996,-743) by the total number of persons in the labor force in the City of New York (3,330,803).

Accordingly, the resulting relevant minority labor force statistic is 29.92 percent.

The Department of Labor also considers the availability of qualified mi-

[1] United States Department of Commerce, Bureau of the Census, 1970 Census of the Population, Current Social and Economic Characteristics—New York PC(1)—C34, Appendix B, indicates that persons of Spanish heritage are identified in various ways. In 42 states and the District of Columbia, this population is identified as "Persons of Spanish-language;" in five Southwestern States as "Persons of Spanish-language or Spanish Surname;" and in three middle Atlantic States as "Persons of Puerto Rican birth or parentage."

norities for work in the construction industry. Assessments of current availability are speculative at best. However, it is reasonable to consider the educational achievement of construction workers. It is significant that as of 1970, 92 percent of the construction workers reported by the Bureau of the Census had completed four years of high school or less. Thus, it is deemed appropriate to compare the non-white labor force in the City of New York who have a high school education or less with the total labor force with similar educational achievement. After considering the educational achievement of the non-white labor force with that of the total labor force it appears that a greater portion of the non-white labor force is available for employment in the construction industry. As a result of adjustment for this educational factor, the relevant labor force becomes 32.84 percent.

One other factor in the analysis of the proper goal for minority utilization in the City of New York is the population "undercount", defined as omission in coverage of the decennial Census. The undercount is computed by the Bureau of the Census and is used by the Bureau to update the decennial Census findings in intermediate years. The Bureau of Census reports that the national minority undercount is approximately 7.7 percent while that of non-minorities is 1.9 percent. Inclusion of this factor in the computation of the relevant labor force raises the goal to 34.2 percent.

Conclusion of findings. Taking into account the factors recited herein, as well as considering the availability of qualified and qualifiable minorities for employment in the construction industry and allowing for possible over inclusiveness of the Spanish language data as a substitute for statistics for Spanish surnamed individuals, the Department of Labor finds that the goal for minority utilization for each construction trade covered by the Revised New York Plan should be 33 percent.

In adopting this goal, the Department believes that it is less important that a particular percentage goal might be slightly optimistic, given current availability of qualified and qualifiable minorities, provided the Revised New York Plan contains fair procedures for contractors to make such a showing. Accordingly, the Revised New York Plan includes provisions for notice to contractors and a meaningful opportunity to challenge any allegations of noncompliance and prove that they have made the good faith efforts required of them to comply with the requirements of the Plan.

Timetables. In an effort to ensure equal employment opportunity and provide practical intermediate goals for the annual increase in minority participation in the City of New York construction industry, the Department has determined that the proposed Revised New York Plan should cover a three-year period. Those trades currently covered by Part II of the Federal EEO Bid Conditions shall be deemed to be committed to goals which reflect a sequential increase in the goals of the last year of Part II with subsequent increases to meet the ultimate goal of 33 percent by 1978. As to those trades not covered by Part II of the Federal EEO Bid Condition industry, the Department has determwhich recognize that efforts in support of affirmative action have been in effect in the City of New York since 1971. Therefore, the first year goals are set at a level which reflects the Department's confidence that effort toward equal employment opportunity has occurred.

Coverage. It is determined that the Revised New York Plan is necessary to provide for minority participation in the following trades:

Asbestos Workers
Boilermakers
Bricklayers
Carpenters
Wharf & Dock Builders
Electricians
Glaziers
Ironworkers (Structural)
Ironworkers (Ornamental)
Elevator Constructors
Operating Engineers
Metal Latherers
Plasterers
Plumbers
Steamfitters
Painters
Roofers
Cement Masons
Tapers
Laborers
Sheetmetal
Terrazzo Finishers
Teamsters

Evaluation and advisory recommendation. The Department recognizes that the contractors, unions, and the minority community, who must operate on a day-to-day basis under the Revised New York Plan are in the best positions to evaluate the effectiveness of the Plan. Therefore the Department of Labor shall make every effort to encourage and develop a voluntary committee representing these three groups, which committee shall periodically review the effectiveness of the Plan and make advisory recommendations to the Department in this regard.

Opportunity for comments. Inquiries may be addressed, and data, views, and arguments concerning the proposed Revised New York Plan may be submitted to Mr. Philip J. Davis, Director, Office of Federal Contract Compliance, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. All material received on or before August 6, 1975, will be considered. All comment in response to this proposal will be available for public inspection during normal business hours at the forgoing address.

It is therefore proposed to issue 41 CFR Part 60–14 in the manner set forth below:

PART 60–14—REVISED NEW YORK PLAN

Sec.

AUTHORITY: Secs. 201, 202, 205, 211, 301, 302, and 303, Executive Order 11246 (30 FR 12319; 3 CFR 1964–65 Comp., p. 406); 41 CFR 60–1.1 and 60–1.40.

§ 60–14.1 Purpose and scope of the Revised New York Plan.

The purpose of this regulation is to implement the provisions of Executive Order 11246, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors in the City of New York. All construction activity, including non-Federally involved work of any contractor or subcontractor performing on a non-exempt Federal and Federally assisted construction contract in the City of New York shall be subject to the requirements of this regulation. Accordingly, the Revised New York Plan must be included in all invitations and other solicitations for bids for a Federally involved construction contract or subcontract in the City of New York when its estimated cost exceeds $10,000.

§ 60–14.2 Notice.

The following Notice shall be included in all invitations and other solicitations for bids on non-exempt federally involved construction contracts in the New York Plan area.

NOTICE OF REQUIREMENT, SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

Each bidder, contractor or subcontractor (hereafter the contractor) must fully comply with the requirements, terms and conditions of the revised New York plan including the goals for minority manpower utilization as to each construction trade it intends to use on this construction contract and all other construction work (both Federal and non-Federal) in the New York area during the performance of this contract or subcontract. The contractor commits itself to the goals for minority manpower utilization contained herein and all other requirements, terms and conditions of the Revised New York Plan by submitting a properly signed bid.

§ 60–14.3 Goals for minority utilization.

The following goals for minority manpower utilization shall express the contractor's commitment to the percentage of minority workhours to be worked in each specified craft on all work performed by the contractor in the City of New York during the performance of this contract. "Minority" is defined as including blacks, Spanish surnamed Americans, Orientals and American Indians and includes both minority men and minority women.

Trade:	Goals for minority group employment until June 30, 1976
Asbestos Workers [1]	28
Boilermakers [1]	23
Bricklayers	23
Carpenters [1]	32
Cement Masons [1]	27
Dock Builders	23
Electricians [1]	23
Elevator Constructors [1]	23
Glaziers [1]	23
Ironworkers (ornamental) [1]	23
Ironworkers (structural) [1]	32
Laborers (all)	23
Lathers [1]	26
Operating Engineers [1]	26
Painters [1]	26
Plasterers [1]	23
Plumbers [1]	23
Roofers [1]	23
Sheet Metal	23
Steamfitters [1]	[2] 23
Teamsters [1]	23
Tapers	23
Terrazzo Workers	23

Trade:	Goals for minority group employment until June 30, 1977
Asbestos Workers [1]	30
Boilermakers [1]	28
Bricklayers [1]	28
Carpenters [1]	32
Cement Masons [1]	30
Dock Builders	28
Electricians [1]	28
Elevator Constructors [1]	28
Glaziers [1]	28
Ironworkers (ornamental) [1]	28
Ironworkers (structural) [1]	32
Laborers (all)	28
Lathers [1]	30
Operating Engineers [1]	30
Painters [1]	30
Plasterers [1]	28
Plumbers [1]	28
Roofers [1]	28
Sheet Metal	28
Steamfitters [1]	[2] 28
Teamsters [1]	28
Tapers	28
Terrazzo Workers	28

Trade:	Goals for minority group employment until June 30, 1978
Asbestos Workers [1]	33
Boilermakers [1]	33
Bricklayers [1]	33
Carpenters [1]	33
Cement Masons [1]	33
Dock Builders	33
Electricians [1]	33
Elevator Constructors [1]	33
Glaziers [1]	33
Ironworkers (structural) [1]	33
Ironworkers (structural) [1]	33
Laborers (all)	33
Lathers [1]	33
Operating Engineers [1]	33
Painters [1]	33
Plasterers [1]	33
Plumbers [1]	33
Roofers [1]	33
Sheet Metal	33
Steamfitters [1]	[2] 33
Teamsters [1]	33
Tapers	33
Terrazzo Workers	33

[1] Trade covered by Part II of the New York Federal EEO Bid Conditions.

[2] Trade operating under a Consent Decree or Court Order.

(a) The goals for minority manpower utilization above are expressed in terms of workhours of training and employment as a proportion of the total workhours to be worked by the contractor's aggregate work force in that trade on all projects (both Federal and non-Federal) in the City of New York during the performance of its contract or subcontract (i.e. the period beginning with the first day of work on the Federal or Federally assisted construction contract and ending with the last day of work).

(b) The workhours of minority work must be substantially uniform throughout the length of the contract in each trade, and minorities should be employed evenly on each of a contractor's projects. Nevertheless, failure of a contractor to employ minorities evenly on each of its projects shall not constitute noncompliance provided the percentage of minority manhours employed by the contractor in its aggregate work force in the City of New York meets or exceeds its commitment to the goals for minority manpower utilization in the Revised New York Plan and the contractor has not violated the Equal Opportunity Clause of the contract in the assignment of minorities to its projects. The transfer of minority employees from employer-to-employer or from project-to-project for the purpose of meeting the contractor's goal shall be a violation of the Revised New York Plan. Otherwise, the contractor shall be deemed to be in compliance with the requirements, terms, and conditions of the Revised New York Plan if:

(1) The minority manpower utilization rate of the contractor meets or exceeds its commitment to the goals for minority manpower utilization in its aggregate work force, both Federally involved and non-Federal, within the City of New York provided, that if the contractor has denied equal employment opportunity in violation of the Equal Opportunity Clause of this contract, it shall not be in compliance with the Revised New York Plan or

(2) The contractor can establish that it is a member of a contractor's association or other employer organization which has as one of its purposes the expanded utilization of minority manpower and the total minority manpower utilization rate of all the member contractors on all projects in which they are involved within the City of New York meets the contractor's minority manpower utilization commitment in the Revised New York Plan provided, that if the contractor has denied equal employment opportunity in violation of the Equal Opportunity Clause of this contract it shall not be in compliance with the Revised New York Plan or

(3) The contractor can establish that it has a collective bargaining agreement with a labor organization, that it utilizes such organization as its source for over 80 percent of its manpower needs and, that the percentage of minority membership of such organization and the total percentage of minorities referred for employment on all projects within the City of New York meets the contractor's commitment in the Revised New York Plan provided, that if the contractor has denied equal employment opportunity in violation of the Equal Opportunity Clause of this contract it shall not be in compliance with the Revised New York Plan.

(c) In the event that work is performed after the expiration date of the Revised New York Plan on a construction contract awarded pursuant to the requirements, terms and conditions of the Plan the goals for minority manpower utilization for 1978 shall be applicable to such work. The contractor's commitment to goals of minority manpower utilization is intended to meet its affirmative action obligations under Executive Order 11246, as amended, and is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the contractor's attention that the goals are being used in a discriminatory manner, it shall immediately report that fact to the Office of Federal Contract Compliance so that appropriate proceedings may be instituted.

§ 60–14.4 Good faith efforts.

The contractor shall be deemed to be in compliance with the requirements, terms, and conditions of the Revised New York Plan if it meets or exceeds its commitment to the goals for minority manpower utilization in its aggregate work force in the City of New York for each trade for which it is committed to a goal under the Revised New York Plan. The contractor's commitment to the goals for minority manpower utilization as required by the Revised New York Plan constitutes a commitment that it will make every good faith effort to meet such goals. No contractor shall be found in noncompliance solely on account of its failure to meet its goals, but shall be given the opportunity to demonstrate that it has instituted all the specific affirmative action steps specified in the Revised New York Plan and has made every good faith effort to make these steps work toward the attainment of its goals within the timetables, all to the purpose of expanding minority manpower utilization in its aggregate work force in the City of New York. Contractors who fail to achieve their commitments to the goals for minority manpower utilization must have engaged in affirmative utilization, which is at least as extensive as the following steps:

(a) Notification to the minority community organizations when the contractor or union has employment opportunities available and maintenance of records regarding the organizations' response.

(b) Maintenance of a file of the names and addresses of each minority worker referred by the union to the contractor and what action was taken with respect to each such referred worker. If a worker was sent to the union hiring hall for referral or if such worker was not referred

by the union or not employed by the contractor, the file should document this and the reasons therefor.

(c) The contractor shall promptly notify the Office of Federal Contract Compliance when the union or unions with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor, or the contractor has other information that the union referral process has impeded efforts to meet its goals.

(d) Participation in training programs in the area, especially those funded by the Department of Labor.

(e) Dissemination of the contractor's or union's EEO policy within the respective organizations as applicable by including it in any policy manual; by publicizing it in company or union newspaper, annual report, etc.; by posting of the policy; and by specific review of the policy with minority employees or members.

(f) Dissemination of its EEO policy externally by informing and discussing it with all recruitment sources; by advertising in news media, specifically including minority news media; and by notifying and discussing it with all contractors, and subcontractors.

(g) Specific and constant written and oral recruitment efforts directed at all minority organizations, schools with minority students, minority recruitment organizations and minority training organizations within the contractor's or union's recruitment area.

(h) Specific efforts to encourage present minority employees or members to recruit their friends and relatives.

(i) The contractor shall validate all tests and other selection requirements as required by the Testing and Selection Order (41 CFR Part 60–3).

(j) Making every effort to provide after school, summer, and vacation employment to minority youths.

(k) Where reasonable, the development of on-the-job training opportunities and participation and assistance in any association or group training programs relevant to the contractor's or union's needs.

(l) Continuing inventory and evaluation of all minority personnel or members for promotional opportunities and encouragement of minority employees or members to seek such opportunities.

(m) Assuring that seniority practices, job classifications, etc., do not have a discriminatory effect.

(n) Assuring that all facilities and activities are non-segregated.

(o) Continual monitoring of all personnel activities to insure that its EEO policy is being carried out.

(p) The contractor shall solicit bids for subcontracts from available minority subcontractors with the trades covered by the Revised New York Plan to the maximum extent practicable including circulation of minority contractor associations.

§ 60–14.5 Administrative procedure for enforcement.

(a) Each agency shall review the contractor's employment practices during the performance of the contract. If the contractor meets its goals or can demonstrate that it has made every good faith effort to meet the goals and is not otherwise violating the Equal Opportunity Clause of this contract or any other Federal equal employment opportunity laws or regulations, the contractor shall be presumed to be in compliance with Executive Order 11246, as amended, and the Revised New York Plan. In that event, no formal sanctions or proceedings leading toward sanctions shall be instituted unless the agency otherwise determines that the contractor is not providing equal employment opportunities.

(b) Where the agency (see 41 CFR 60–1.3 (a) and (b)) finds that the contractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and the Revised New York Plan, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and its regulations. When the agency proceeds with such formal action it has the burden of proving that the contractor has not met the requirements of the Revised New York Plan. The contractor's failure to meet its goals shall, however, shift to it the requirement to come forward with evidence to show that it has made every "good faith" effort (as described in § 60–14.4) to meet such goals. The pendency of such formal proceedings shall be taken into consideration by Federal agencies in determining whether such contractor can comply with the requirements of Executive Order 11246, as amended, and is therefore a "responsible prospective contractor" within the meaning of the Federal procurement law.

(c) It shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act, as amended, and Title VII of the Civil Rights Act of 1964. It is the policy of the Office of Federal Contract Compliance that contractors have a responsibility to provide equal employment opportunity if they wish to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to a labor organization and, as a result, are prevented from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, its implementing rules, and regulations.

§ 60–14.6 Contractor obligations.

All contractors shall include the Revised New York Plan in all bid invitations or other prebid communications, written or otherwise, with their prospective subcontractors. Whenever a contractor subcontracts a portion of the work in any trade covered by the Revised New York Plan it shall include the Plan in such subcontracts and each subcontractor shall be bound by the Revised New York Plan to the full extent as if it were the prime contractor. The contractor shall not be accountable for the failure of its subcontractor to fulfill its affirmative action commitments. However, the prime contractor shall give notice to the Office of Federal Contract Compliance of the Department of Labor and the contracting agency of any refusal or failure of any subcontractor to fulfill its obligations under the Revised New York Plan. Noncompliance with these requirements by a subcontractor will be treated in the same manner as such failure by the prime contractor. Contractors must keep such records and file such reports relating to the provisions of the Revised New York Plan as shall be required by the contracting or administering agency.

§ 60–14.7 Obligations of the Federal Government.

(a) Nothing in the Revised New York Plan shall be interpreted to diminish the responsibilities of the contracting and administering agencies nor the obligations of contractors pursuant to Executive Order 11246 as amended, for those trades and those contracts not covered by the Plan.

(b) The procedures set forth in the Revised New York Plan shall not apply to any contract when the head of the agency (see 41 CFR 60–13 (a) and (b)) determines that such contract is essential to the national security and that its award without following such procedure is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within 30 days.

(c) Nothing in the Revised New York Plan shall be interpreted to diminish the present contract compliance review and complaint programs.

(d) Requests for exemptions from the Revised New York Plan must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

Signed at Washington, D.C. this 30th day of June, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.75–17507 Filed 7–3–75;8:45 am]

[41 CFR Part 60–12]

PHILADELPHIA AREA PLAN

Affirmative Action for Federally Involved Construction Contractors; Notice of Proposed Rulemaking

This notice of proposed rulemaking is issued under the authority of sections 201, 205, 207, 301, and 303 of Executive Order 11246 (30 FR 12319), as amended.

Section 201 of Executive Order 11246, as amended, provides that the Secretary of Labor shall adopt rules and regulations necessary and appropriate to achieve the purposes of the Order. One of the purposes of Executive Order 11246, as amended, is to require Federal and Federally assisted construction contractors and subcontractors to "take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, religion, sex, or national origin." (Section 202(1).)

Notice is hereby given that the Secretary proposes to adopt a New Philadelphia Plan in order to further implement the affirmative action mandate of Executive Order 11246, as amended. If adopted it is proposed to make the New Philadelphia Plan effective 30 days from the date of its republication in the FEDERAL REGISTER.

Background. In October, 1967, the original Philadelphia Plan was issued by the Federal Executive Board, composed of Federal contracting agency representatives in the Philadelphia area. This plan was declared invalid by the Comptroller General of the United States as being in violation of competitive bidding principles (48 Comp. Gen. 326 (1968)) and subsequently was rescinded. The Revised Philadelphia Plan was issued on June 27, 1969, and was amended on September 23, 1969, following a public hearing.

The Revised Philadelphia Plan established goals for minority manpower utilization in six trades in which minority representation averaged less than 1.6 percent. In February, 1971, the Plan was amended to extend its coverage to include all of a Federally involved construction contractor's work, both Federal and private. The Revised Philadelphia Plan was scheduled to expire on December 31, 1973, but has since been extended twice, the most recent extension being effective through June 30, 1975. The purpose of these extensions was to provide the Department of Labor with ample time to explore the possibility of replacing the Revised Philadelphia Plan with a voluntary hometown plan.

Since January, 1974, the Department has tried unsuccessfully to encourage representatives of labor, management, and the minority community to establish a voluntary plan. As a result of these efforts it is the determination of the OFCC that a hometown plan is not forthcoming despite the Department's best efforts. Therefore, it is the recommendation of OFCC that a new Philadelphia Plan be promulgated which includes 23 construction crafts rather than the current 6. As a result of the unsuccessful efforts of the Department to bring the parties together in a voluntary plan and in view of the continued underutilization of minorities in the Philadelphia area, it is deemed necessary to issue a new expanded Philadelphia Plan.

General findings. Executive order 11246, as amended, is designed to make equal employment opportunity a reality for present and potential employees of Federal and Federally assisted construction contractors and subcontractors. The contract compliance program is premised on the right and the responsibility of the Federal Government to determine the terms and conditions upon which it will contract with private parties for the procurement of supplies and services, including construction, essential to the functioning of Government. Under Executive Order 11246, as amended, Federal and Federally assisted construction contractors are obliged to forbear from employment discrimination based on race, color, religion, sex, or national origin, and to take affirmative action to ensure that employees and applicants for employment are treated without regard to these non-merit factors. This obligation is embodied in Section 202 of Executive Order 11246, as amended, and is commonly referred to as the Equal Employment Opportunity Clause. The Executive Order's affirmative action requirement is intended to ensure prompt achievement of full and equal employment opportunity through the establishment of specific and results-oriented proecdures.

Computtaion of goals for minority utilization. In order to give form and content to the affirmative action obligation of Executive Order 11246, as amended, the Department of Labor developed the concept of goals and timetables. In computing goals for minority manpower utilization, the Department has attempted to rely upon the most precise standards and statistics available. In assessing whether a goal for minority manpower utilization is reasonable, the Department of Labor is guided by the principle that the objective of a goal is to place eligible minority group members in the position which they would have enjoyed if not for underutilization in the past. The Department believes that statistics with respect to the labor force available in the 1970 Census are a reasonable measure of the relevant minority labor force which, but for underutilization, would be equally represented in the Philadelphia area construction industry. Even though the labor force statistics in the 1970 Census reflect persons who were 16 years of age and over in 1970, such persons are now at least 18 years of age and are eligible for consideration for employment in the construction industry. Data is available on the Black and Puerto Rican civilian labor force in the Philadelphia area, but there are no labor force statistics collected by the Bureau of the Census on Spanish Surnamed individuals in the five-county area. Therefore, absolute precision is not possible. However, statistics on non-Puerto Rican Spanish Surnamed individuals in the labor force can be calculated from data compiled for the Spanish language[1] population of the five-county area. To determine the labor force statistics on the Spanish language labor force using the data presently available, it is necessary first to determine the ratio of the number of Spanish language individuals in the five-county area to the number of Puerto Rican individuals in the area, and then to multiply the number of Puerto Ricans in the labor force by the resulting ratio.

We also have attempted to distinguish the percentage of persons of Spanish origin in the labor force in the five-county area who regard themselves as being black rather than white. Otherwise, certain individuals will be counted twice, once as black and once as a member of the Spanish origin group, resulting in an artificially inflated statistic.

Taking into account these basic factors, the number of minorities in the labor force in the five-county area may be obtained by adding the black labor force (286,050) together with the number of Spanish language persons in the labor force. This number is calculated by multiplying the Puerto Rican labor force (10,731) by a ratio resulting from dividing the number of persons in the Spanish language group in the population (64,056) by the number of Puerto Ricans in the population (15,890). This ratio (3.62) is then multiplied by the percentage of Spanish language individuals in the area who count themselves as white rather than black (89.2%). After adding the results of this calculation, the relevant labor force may be derived by dividing the total number of minorities in the five-county labor force (320,697) by the total number of persons in the labor force within the five-county area (1,588,841). Accordingly, the resulting relevant labor force statistic is 20.2 percent.

Although Orientals and American Indians are included in the OFCC definition of minorities, there is a lack of satisfactory information regarding their respective labor force statistics. Nevertheless, Census information indicates that the combined Oriental and American Indian presence in the five-county area is less than one percent of the population and, therefore, it appears that the lack of precise information concerning these minority groups does not affect the calculation enough to alter the relevant labor force more than 1 percent.

---

[1] United States Department of Commerce, Bureau of the Census, 1970 Census of the Population, Current Social and Economic Characteristics—Pennsylvania PC (1)—C40, Appendix B, indicates that persons of Spanish heritage are identified in various ways. In 42 states and the District of Columbia, this population is identified as "Persons of Spanish-language;" in five Southwestern States as "Persons of Spanish-language or Spanish Surname;" and in three middle Atlantic States as "Persons of Puerto Rican birth or parentage."

The Department of Labor also considers the availability of qualified minorities for work in the construction industry. Assessments of current availability are speculative at best. However, it is reasonable to consider the educational achievement of construction workers. It is significant that as of 1970, 92 percent of the construction workers reported by the Bureau of the Census had completed four years of high school or less. Thus, it is deemed appropriate to compare the non-white labor force in the five-county area with a high school education or less with the total labor force with similar educational achievement. After considering the educational achievement of the non-white labor force with that of the total labor force it appears that a greater portion of the non-white labor force is available for employment in the construction industry. As a result of adjustments for this educational factor, the relevant labor force becomes 22.02 percent.

One other factor in the analysis of the proper goal for minority utilization in the five-county area is the population "undercount", defined as omission in coverage of the decennial Census. The undercount is computed by the Bureau of the Census and is used by the Bureau to update the decennial Census findings in intermediate years. The Bureau of Census reports that the national minority undercount is approximately 7.7 percent while that of non-minorities is 1.9 percent. Inclusion of this factor in the computation of the relevant labor force raises the goal to 22.8 percent.

Conclusion of findings. Taking into account the factors recited herein, as well as considering the availability of qualified and qualifiable minorities for employment in the construction industry and allowing for possible over inclusiveness of the Spanish language data as a substitute for statistics for Spanish surnamed individuals, as well as the lack of satisfactory information concerning Orientals and American Indians, the Department of Labor finds that the goal for minority utilization for each construction trade covered by the New Philadelphia Plan should be 22 percent.

In proposing this goal, the Department believes that it is less important that a particular percentage goal might be slightly optimistic, given current availability of qualified and qualifiable minorities, provided the New Philadelphia Plan contains fair procedures for contractors to make such a showing. Accordingly, the New Philadelphia Plan includes provisions for notice to contractors and a meaningful opportunity to challenge any allegations of noncompliance and prove that they have made the good faith efforts required of them to comply with the requirements of the Plan.

Timetables. In an effort to ensure equal employment opportunity and provide practical intermediate goals for the annual increase in minority participation in the Philadelphia construction industry, the Department has determined that the proposed New Philadelphia Plan should cover a three-year period. Those trades currently covered by the Revised Philadelphia Plan shall be deemed to be committed to the goals of the last year of the Revised Philadelphia Plan with subsequent increases to meet the 22 percent figure by 1978. As to those trades not covered by the Revised Philadelphia Plan, intermediate goals are established which recognize that efforts in support of affirmative action have been in effect in Philadelphia since 1967. Therefore, the first year goals are set at a level which reflects the Department's confidence that effort toward equal employment opportunity has occurred.

Coverage. It is found that the most skilled and most remunerative construction trades have a level of minority participation below that which should have resulted from equal employment opportunity without regard to race, color, or national origin. Therefore, it is determined that the New Philadelphia Plan is necessary to provide for minority participation in the following trades:

Asbestos Workers
Boilermakers
Bricklayers
Carpenters
Wharf & Dock Builders
Millwrights
Electricians
Glaziers
Ironworkers
Elevator Constructors
Operating Engineers
Latherers
Plasterers
Plumbers & Pipefitters
Steamfitters
Sprinkler Fitters
Sheet Metal Workers
Stone Masons
Tile Setters
Terrazzo Finishers
Teamsters
Marble Setters
Floor Coverers

Evaluation and advisory recommendation. The Department recognizes that the contractors, unions, and the minority community, who must operate on a day-to-day basis under the New Philadelphia Plan are in the best positions to evaluate the effectiveness of the Plan. Therefore, the Department of Labor shall make every effort to encourage and develop a voluntary committee representing these three groups, which committee shall periodically review the effectiveness of these regulations and make advisory recommendations to the Department in this regard.

Opportunity for comments. Inquiries may be addressed, and data, views, and arguments concerning the proposed New Philadelphia Plan may be submitted to Mr. Philip J. Davis, Director, Office of Federal Contract Compliance, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. All material received on or before Aug. 6, 1975, will be considered. All comments in response to this proposal will be available for public inspection during normal business hours at the foregoing address.

It is therefore proposed to revise 41 CFR Part 60–12 in the manner set forth below:

PART 60–12—NEW PHILADELPHIA PLAN

Sec.

AUTHORITY: Secs. 201, 202, 205, 211, 301, 302, and 303. Executive Order 11246 (30 FR 12319, 3 CFR 1964–65 Comp., p. 406) and 41 CFR 60–1.1 and 60–1.40.

§ 60–12.1 Purpose and scope of the new Philadelphia Plan.

The purpose of this regulation is to implement the provisions of Executive Order 11246, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal contractors and subcontractors and Federally-assisted construction contractors and subcontractors in the Philadelphia area. All construction activity, including non-Federally involved work of any contractor or subcontractor performing on a non-exempt Federal and Federally assisted construction contract in the Philadelphia area, which includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, shall be subject to the requirements of this regulation. Accordingly, the New Philadelphia Plan must be included in all invitations and other solicitations for bids for a Federally involved construction contract or subcontract in the Philadelphia area when its estimated cost exceeds $10,000.

§ 60–12.2 Notice.

The following Notice shall be included in all invitations and other solicitations for bids on non-exempt Federally involved construction contracts in the Philadelphia Plan area.

NOTICE OF REQUIREMENT SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

Each bidder, contractor or subcontractor (hereafter the contractor) must fully comply with the requirements, terms and conditions of the new Philadelphia Plan including the goals for minority manpower utilization as to each construction trade it intends to use on this construction contract and all other construction work (both Federal and non-Federal) in the Philadelphia area during the performance of this contract or subcontract. The contractor commits itself to the goals for minority manpower utilization contained herein and all other requirements, terms and conditions of the New Philadelphia Plan by submitting a properly signed bid.

§ 60–12.3 Goals for minority utilization.

The following goals for minority manpower utilization shall express the contractor's commitment to the percentage of minority workhours to be worked in

each specified craft on all work performed by the contractor in the Philadelphia area during the performance of this contract. "Minority" is defined as including blacks, Spanish surnamed Americans, Orientals and American Indians and includes both minority men and minority women.

Trade:	*Goals for minority group employment until June 30, 1976*
Asbestos Workers	19
Boilermakers	19
Bricklayers	19
Carpenters	19
Wharf and Dock Builders	19
Millwrights	19
Electricians [1]	19
Glaziers	19
Ironworkers [1]	22
Elevator Constructors [1]	19
Operating Engineers	19
Latherers	19
Plasterers	19
Plumbers and Pipefitters [1]	20
Steamfitters [1]	20
Sprinkler Fitters	19
Sheet Metal Workers [1]	19
Stone Masons	19
Tile Setters	19
Terrazzo Finishers	19
Teamsters	19
Marble Setters	19
Floor Coverers	19

Trade:	*Goals for minority group employment until June 30, 1977*
Asbestos Workers	20
Boilermakers	20
Bricklayers	20
Carpenters	20
Wharf and Dock Builders	20
Millwrights	20
Electricians [1]	20
Glaziers	20
Ironworkers [1]	22
Elevator Constructors [1]	20
Operating Engineers	20
Latherers	20
Plasterers	20
Plumbers and Pipefitters [1]	21
Steamfitters [1]	21
Sprinkler Fitters	20
Sheet Metal Workers [1]	20
Stone Masons	20
Tile Setters	20
Terrazzo Finishers	20
Teamsters	20
Marble Setters	20
Floor Coverers	20

Trade:	*Goals for minority group employment until June 30, 1978*
Asbestos Workers	22
Boilermakers	22
Bricklayers	22
Carptenters	22
Wharf and Dock Builders	22
Millwrights	22
Electricians [1]	22
Glaziers	22
Ironworkers [1]	22
Elevator Constructors [1]	22
Operating Engineers	22
Latherers	22
Plasterers	22
Plumbers and Pipefitters [1]	22
Steamfitters [1]	22
Sprinkler Fitters	22
Sheet Metal Workers [1]	22

[1] Trade covered by Revised Philadelphia Plan.

Trade:	*Goals for minority group employment until June 30, 1978*
Stone Masons	22
Tile Setters	22
Terrazzo Finishers	22
Teamsters	22
Marble Setters	22
Floor Coverers	22

(a) The goals for minority manpower utilization above are expressed in terms of workhours of training and employment as a proportion of the total workhours to be worked by the contractor's aggregate work force in that trade on all projects (both Federal and non-Federal) in the Philadelphia Area during the performance of its contract or subcontract (i.e. the period beginning with the first day of work on the Federal or Federally assisted construction contract and ending with the last day of work).

(b) The workhours of minority work must be substantially uniform throughout the length of the contract in each trade, and minorities should be employed evenly on each of a contractor's projects. Nevertheless, failure of a contractor to employ minorities evenly on each of its projects shall not constitute noncompliance provided the percentage of minority manhours employed by the contractor in its aggregate work force in the Philadelphia area meets or exceeds its commitment to the goals for minority manpower utilization in the New Philadelphia Plan and the contractor has not violated the Equal Opportunity Clause of the contract in the assignment of minorities to its projects. The transfer of minority employees from employer-to-employer or from project-to-project for the purpose of meeting the contractor's goal shall be a violation of the New Philadelphia Plan. Otherwise, the contractor shall be deemed to be in compliance with the requirements, terms, and conditions of the New Philadelphia Plan if:

(1) The minority manpower utilization rate of the contractor meets or exceeds its commitment to the goals for minority manpower utilization in its aggregate work force, both Federally involved and non-federal, within the Philadelphia area provided, that if the contractor has denied equal employment opportunity in violation of the Equal Opportunity Clause of this contract, it shall not be in compliance with the New Philadelphia Plan or

(2) The contractor can establish that it is a member of a contractor's association or other employer organization which has as one of its purposes the expanded utilization of minority manpower and the total minority manpower utilization rate of all the member contractors on all projects in which they are involved within the Philadelphia area meets the contractor's minority manpower utilization commitment in the New Philadelphia Plan provided, that if the contractor has denied equal employment opportunity in violation of the Equal Opportunity Clause of this contract it shall not be in compliance with the New Philadelphia Plan or

(3) The contractor can establish that it has a collective bargaining agreement with a labor organization, that it utilizes such organization as its source for over 80 percent of its manpower needs and, that the percentage of minority membership of such organization and the total percentage of minorities referred for employment on all projects within the Philadelphia area meets the contractor's commitment in the New Philadelphia Plan provided, that if the contractor has denied equal employment opportunity in violation of the Equal Opportunity Clause of this contract it shall not be in compliance with the New Philadelphia Plan.

(c) In the event that work is performed after the expiration date of the New Philadelphia Plan on a construction contract awarded pursuant to the requirements, terms and conditions of the Plan the goals for minority manpower utilization for 1978 shall be applicable to such work. The contractor's commitment to goals of minority manpower utilization is intended to meet its affirmative action obligations under Executive Order 11246, as amended, and is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the contractor's attention that the goals are being used in a discriminatory manner, it shall immediately report that fact to the Office of Federal Contract Compliance so that appropriate proceedings may be instituted.

§ 60–12.4 Good faith efforts.

The contractor shall be deemed to be in compliance with the requirements, terms, and conditions of the New Philadelphia Plan if it meets or exceeds its commitment to the goals for minority manpower utilization in its aggregate work force in the Philadelphia area for each trade for which it is committed to a goal under the New Philadelphia Plan. The contractor's commitment to the goals for minority manpower utilization as required by the New Philadelphia Plan constitutes a commitment that it will make every good faith effort to meet such goals. No contractor shall be found in noncompliance solely on account of its failure to meet its goals, but shall be given the opportunity to demonstrate that it has instituted all the specific affirmative action steps specified in the New Philadelphia Plan and has made every good faith effort to make these steps work toward the attainment of its goals within the time-tables, all to the purpose of expanding minority manpower utilization in its aggregate work force in the Philadelphia Area. Contractors who fail to achieve their commitments to the goals for minority manpower utilization must have engaged in affirmative action directed at increasing minority manpower utilization, which is at least as extensive as the following steps:

(a) Notification to the minority community organizations when the contractor or union has employment oppor-

tunities available and maintenance of records regarding the organizations' response.

(b) Maintenance of a file of the names and addresses of each minority worker referred by the union to the contractor and what action was taken with respect to each such referred worker. If a worker was sent to the union hiring hall for referral and such worker was not referred by the union or not employed by the contractor, the file should document this and the reasons therefor.

(c) The contractor shall promptly notify the Office of Federal Contract Compliance when the union or unions with whom the contractor has a collective bargaining agreement has not referred to the contractor a minority worker sent by the contractor, or the contractor has other information that the union referral profcess has impeded efforts to meet its goals.

(d) Participation in training programs in the area, especially those funded by the Department of Labor.

(e) Dissemination of the contractor's or union's EEO policy within the respective organizations as applicable by including it in any policy manual; by publicizing it in company or union newspaper, annual report, etc.; by posting of the policy; and by specific review of the policy with minority employees or members.

(f) Dissemination of its EEO policy externally by informing and discussing it with all recruitment sources; by advertising in news media, specifically including minority news media; and by notifying and discussing it with all contractors, and subcontractors.

(g) Specific and constant written and oral recruitment efforts directed at all minority organizations, schools with minority students, minority recruitment organizations and minority training organizations within the contractor's or union's recruitment area.

(h) Specific efforts to encourage present minority employees or members to recruit their friends and relatives.

(i) The contractor shall validate all tests and other selection requirements as required by the Testing and Selection Order (41 CFR Part 60–3).

(j) Making every effort to provide after school, summer and vacation employment to minority youths.

(k) Where reasonable, the development of on-the-job training opportunities and participation and assistance in any association or group training programs relevant to the contractor's or union's needs.

(l) Continuing inventory and evaluation of all minority personnel or members for promotional opportunities and encouragement of minority employees or members to seek such opportunities.

(m) Assuring that seniority practices, job classifications, etc., do not have a discriminatory effect.

(n) Assuring that all facilities and activities are non-segregated.

(o) Continual monitoring of all personnel activities to insure that its EEO policy is being carried out.

(p) The contractor shall solicit bids for subcontracts from available minority subcontractors with the trades covered by the New Philadelphia Plan to the maximum extent practicable including circulation of minority contractor associations.

§ 60–12.5 Administrative procedure for enforcement.

(a) Each agency shall review the contractor's employment practices during the performance of the contract. If the contractor meets its goals or can demonstrate that it has made every good faith effort to meet the goals and is not otherwise violating the Equal Opportunity Clause of this contract or any other Federal equal employment opportunity laws or regulations, the contractor shall be presumed to be in compliance with Executive Order 11246, as amended, and the New Philadelphia Plan. In that event, no formal sanctions or proceedings leading toward sanctions shall be instituted unless the agency otherwise determines that the contractor is not providing equal employment opportunities.

(b) Where the agency (see 41 CFR 60–1.3 (a) and (b)) finds that the contractor has failed to comply with the requirements of Executive Order 11246, the implementing regulations and the New Philadelphia Plan, the agency shall take such action and impose such sanctions as may be appropriate under the Executive Order and its regulations. When the agency proceeds with such formal action it has the burden of proving that the contractor has not met the requirements of the New Philadelphia Plan. The contractor's failure to meet its goals shall, however, shift to it the requirement to come forward with evidence to show that it has made every "good faith" effort (as described in § 60–12.4) to meet such goals. The pendency of such formal proceedings shall be taken into consideration by Federal agencies in determining whether such contractor can comply with the requirements of Executive Order 11246, as amended, and is therefore a "responsible prospective contractor" within the meaning of the Federal procurement law.

(c) It shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act, as amended, and Title VII of the Civil Rights Act of 1964. It is the policy of the Office of Federal Contract Compliance that contractors have a responsibility to provide equal employment opportunity if they wish to participate in Federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to a labor organization and, as a result, are prevented from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, its implementing rules, and regulations.

§ 60–14.6 Contractor obligations.

All contractors shall include the New Philadelphia Plan in all bid invitations or other prebid communications, written or otherwise, with their prospective subcontractors. Whenever a contractor subcontracts a portion of the work in any trade covered by the Philadelphia Plan it shall include the Plan in such subcontracts and each subcontractor shall be bound by the New Philadelphia Plan to the full extent as if it were the prime contractor. The contractor shall not be accountable for the failure of its subcontractor to fulfill its affirmative action commitments. However, the prime contractor shall give notice to the Office of Federal Contract Compliance of the Department of Labor and the contracting agency of any refusal or failure of any subcontractor to fulfill its obligations under the New Philadelphia Plan. Noncompliance with these requirements by a subcontractor will be treated in the same manner as such failure by the prime contractor. Contractors must keep such records and file such reports relating to the provisions of the New Philadelphia Plan as shall be required by the contracting or administering agency.

§ 60–12.7 Obligations of the Federal government

(a) Nothing in the New Philadelphia Plan shall be interpreted to diminish the responsibilities of the contracting and administering agencies nor the obligations of contractors pursuant to Executive Order 11246 as amended, for those trades and those contracts not covered by the Plan.

(b) The procedures set forth in the New Philadelphia Plan shall not apply to any contract when the head of the agency (see 41 CFR § 60–13 (a) and (b)) determines that such contract is essential to the national security and that its award without following such procedure is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within 30 days.

(c) Nothing in the New Philadelphia Plan shall be interpreted to diminish the present contract compliance review and complaint programs.

(d) Requests for exemptions from the New Philadelphia Plan must be made in writing, with justification, to the Director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

Signed at Washington, D.C. this 30th day of June, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.75–17506 Filed 7–3–75;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Parts 205, 206, and 213]

OIL IMPORTS; ADMINISTRATIVE AND GENERAL APPLICABILITY PROCEDURES

Notice of Proposed Rulemaking

On May 27, 1975, the President issued Proclamation No. 4377 (40 FR 23429, May 30, 1975), amending Proclamation No. 3279, as amended, which established the Mandatory Oil Import Program. That Proclamation states, in pertinent part, that:

> The Administrator of the Federal Energy Administration may modify or alter the composition of the [Oil Import] Appeals Board or abolish the Board and establish such other appellate procedures as he deems appropriate.

After completion of internal review and consultation with the Department of Commerce and Justice, the Federal Energy Administration (FEA) proposes to amend Parts 205 (Administrative Procedures and Sanctions) and 213 (Oil Import Regulations), and to vacate and reserve Part 206 (Administrative Procedures for Oil Imports) of its regulations, in order to abolish the Oil Import Appeals Board effective August 1, 1975 and consolidate its functions with those of the Office of Exceptions and Appeals. Since this consolidation would integrate with the general procedures in Part 205 all procedures in Part 206 except those relative to the revocation and suspension of allocations and licenses, FEA also proposes that Part 205 be further amended to authorize such revocation and suspension in accordance with general FEA procedures.

I. Background

Among the functions assigned to FEA pursuant to Executive Order 11790, implementing the Federal Energy Administration Act of 1974 (39 FR 23185, June 27, 1974), was administration of the Mandatory Oil Import Program. This Program, established by Presidential Proclamation pursuant to the authority of section 232 of the Trade Expansion Act of 1962, had previously been administered by the Department of the Interior. Under the Program, exceptions and appeals are considered by an Oil Import Appeals Board composed of a representative from the Federal Energy Administration (formerly from Interior) and the Departments of Commerce and Justice. The purpose of this inter-agency organization was to afford appellants from the Department of the Interior's oil import regulations, consideration from the points of view of antitrust and industry.

Since all regulatory responsibility with respect to oil imports has been transferred to FEA, and since the functions of the Oil Policy Committee have also been vested in it, FEA has determined that the treatment of oil import appeals should be consistent with its other regulatory programs. As a result of Congress' consolidation of petroleum regulatory functions within the FEA, and the Congressional mandate to FEA to "promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise," FEA is charged with considering a broad range of issues which include the competitive and business impacts of regulatory decisions. Hence, the interagency organization of the Board is no longer appropriate and adds little to the perspective of FEA.

Several other factors have also influenced FEA's decision to abolish the Oil Import Appeals Board. These include imposition of the supplemental fee, which has rendered the Board's authority to grant exceptions from the base fees relatively less important. In view of this diminished importance, there is less justification for isolating oil import appeals from proceedings of the Office of Exceptions and Appeals. In addition, it is very desirable that FEA's appellate process be consistent in terms of the applicable procedures, and that the approach adopted with respect to the analysis of individual cases be consistent. This result can best be achieved by placing oil import appeals within the purview of the regular FEA appellate process administered by the Office of Exceptions and Appeals.

II. The Basis of Conforming Procedures for Revocation and Suspension of Allocations and Licenses to the Procedures in Part 205

FEA has determined that in order to insure persons affected by its regulations consistent treatment, irrespective of the regulatory program with which they are concerned, its procedures under Part 205 for revocation and suspension of allocations and licenses issued under Part 213 should be amended. Under Part 206 as presently drawn, the requirements affecting such matters as the availability of a hearing, the submission of briefs, and the times at which responses are due, all differ from the general requirements under Part 205. In addition, procedures in Part 205 providing for stay (Subpart I), and for modification or rescission (Subpart J), do not apply to Part 206. This creates inequities which are not justified by the nature of the revocation and suspension procedure, which FEA proposes to correct.

III. Proposed Regulations for Integrating Oil Import Appeals Board Procedures With FEA Procedures of General Applicability

The Oil Import Appeals Board presently handles two classes of petitions. The first are in the nature of requests for exception from payment of the base fees imposed under Part 213, where the Board is authorized to:

(1) Modify import allocations on grounds of exceptional hardship;

(2) Grant import allocations in special circumstances to persons who would not otherwise be eligible;

(3) Grant allocations of imports of finished products on grounds of exceptional hardship;

(4) Grant import allocations to independent refiners or marketers experiencing exceptional hardship or in emergencies; and

(5) Refund license fees where licenses were subsequently issued on a fee-exempt basis.

Under FEA's proposed regulations, petitions falling into this class would be handled through the Exceptions procedure in Subpart D of Part 205, and would be appealable under Subpart H. All other aspects of Part 205 would, where relevant, also apply to such petitions. Under the proposal, no substantive change would result with respect to the availability, or scope, of exceptions from the base fees. Only the procedural aspects relating to petitions, such as the time and place of filing, and the availability of hearings, would be changed. In addition, as an Appendix to Subpart D, FEA would provide the same format for the presentation of information utilized by the Board, in order that the general information requirement of Subpart D would not curtail a petitioner's opportunity to present the aspects of his case unique to oil imports. Finally, the Office of Exceptions and Appeals would utilize the guidelines, originally issued by the Chairman of the Oil Policy Committee and subsequently adopted by FEA, which are presently utilized by the Board. Cases pending before the Board on August 1, 1975 would be deemed, in all respects, to have been pending in the Office of Exceptions and Appeals.

The second class of petitions considered by the Oil Import Appeals Board is in the nature of appeals from actions of the Director of Oil Imports. These include:

1) Actions taken erroneously on applications for allocations of imports; and

2) Denials of refunds of license fees theretofore paid by a person.

Under FEA's proposed regulations, petitions falling into this class, in addition to appeals from denial of exception from the base fees, would be handled through the Appeals procedure in Subpart H of Part 205. All other aspects of Part 205, where relevant, would also apply. Under the proposal, no substantive change would result with respect to appeals from actions of the Director. Only the procedural aspects relating to petitions, such as the time and place of filing, and the availability of hearings, would be changed. Appellants could also utilize the incremental information format available with respect to exceptions from the base fees, and, as provided with respect to such exceptions, the guidelines utilized by the Oil Import Appeals Board would also be utilized by FEA.

With respect to the suspension and revocation of allocations and licenses, FEA proposes to continue this function in the Director of Oil Imports, but to require that the procedures followed by him be in conformity with the procedures in Part 205. Accordingly, FEA proposes to establish a new Subpart S in Part 205, "Revocation and Suspension of Allocations and Licenses Issued Pursuant to

Part 213," which substantially follows the provisions of Subpart O, "Notices of Probable Violations and Remedial Orders." It would differ from Subpart O, however, in that the civil and criminal penalties provided in Subpart P for violations of other FEA programs would not be applicable. Subpart O itself would also not apply. Thus, revocation and suspension of allocations and licenses would continue to be the only sanction for violation of the Program, although as in Subpart O, FEA proposes that consent orders also be made available.

As with the proposed transfer of functions from the Oil Import Appeals Board to the Office of Exceptions and Appeals, no substantive changes would result from the creation of proposed Subpart S. Only the procedural aspects of revocation and suspension would be changed, in conformity with procedures affecting violations of other FEA programs.

FEA recognizes that these proposed amendments would result in a departure from the procedures of the Director of Oil Imports, whose regulations require a full evidentiary hearing, and might permit a departure from the procedures of the Oil Import Appeals Board, which routinely exercises its discretion in favor of granting such a hearing. This was done in an effort to provide uniform treatment to all individuals in regulatory proceedings before FEA, irrespective of which regulatory program provided the basis for such proceeding. Nevertheless, in order to minimize the effects of the transition, and prevent potential inequities among competitors affected by the oil import regulations, some of whom have participated in regulatory proceedings which included a hearing, it will be FEA's policy to insure that persons affected by Part 213 have an opportunity to make an oral presentation of their case. An informal conference with FEA personnel handling the case will, in most instances, be routinely available, and a hearing will be provided where a person can demonstrate that because of the complexity of his case, a hearing would materially advance its presentation.

Finally, FEA proposes that Part 205, with the exceptions of Subparts E (Exemptions), O (Notices of Probable Violations and Remedial Orders) and P (Investigations, Violations, Sanctions, and Judicial Actions), become generally applicable to the oil import regulations in Part 213. At present, Part 213 is specifically excepted from the application of Part 205, though certain aspects of Part 205, i.e., procedures affecting rulemaking and public hearings, are in fact followed. This would enable FEA to issue interpretations of the oil import regulations under Subpart F, to issue stays under Subpart I, and to permit the full range of procedures currently in effect with respect to other regulatory programs to be utilized for the benefit of persons affected by Part 213. This change is proposed in order that integration of oil import procedures in Part 206 with procedures in Part 205 can be complete in all respects.

Interested persons are invited to submit written data, views, or arguments with respect to the amendments to Executive Communications, Room 3309, Federal Energy Administration, Box No. DP, The Federal Building, Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to the Federal Energy Administration with the designation "Amendments to Consolidate Parts 205 and 206." Fifteen (15) copies should be submitted. All comments received by 4:30 p.m., e.d.s.t., July 23, 1975, will be considered by the Federal Energy Administration in evaluating the revision and amendments.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

FEA has determined that since these proposed changes are procedural only, they are not "likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses." Therefore, the provisions of section 7(i)(1)(B) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), providing for an opportunity to orally present views, data, and arguments where there is such an impact, are hereby waived.

In this connection, FEA discussed the necessity for a public hearing on this proposal with industry representatives, who advised FEA that their views could adequately be presented through written comments. However, even in view of this advice, and of FEA's determination that no public hearing is required pursuant to statute, FEA will provide such a hearing (postponing the effective date of these amendments, if necessary) if a significant number of persons indicate that such a hearing would be desirable. Requests for a hearing may be submitted to Executive Communications, FEA, within seven days of the publication of this notice.

Finally, this proposal has been reviewed in accordance with Executive Order 11821 and OMB Circular No. A-107 and has been determined not to require evaluation of its inflationary impact as provided therein.

(Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185; Trade Expansion Act of 1962, Pub. L. 87-794, as amended, Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Proclamation No. 3279, 24 FR 1781, as amended by Proclamation No. 4210, 38 FR 9654, Proclamation No. 4227, 38 FR 16195, Proclamation No. 4317, 38 FR 35103, Proclamation No. 4341, 40 FR 3956, Proclamation No. 4370, 40 FR 19421, and Proclamation No. 4377, 40 FR 23429.)

In consideration of the foregoing, the Federal Energy Administration proposes to amend Parts 205 and 213, and to vacate and reserve Part 206, of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below, effective August 1, 1975.

Issued in Washington, D.C., July 1, 1975.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. Section 205.1 is amended to read as follows:

§ 205.1 Purpose and scope.

This part establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Federal Energy Administration and State Offices, in accordance with Parts 210, 211, 212, 213, and 215 of this chapter, except that Subparts E, O, and P of this part shall not apply to proceedings instituted in accordance with Part 213 of this chapter.

2. Section 205.2 is amended in the definition of "Aggrieved" to read as follows:

§ 205.2 Definitions.

* * * * *

"Aggrieved", for purposes of administrative proceedings, describes and means a person with an interest sought to be protected under the FEAA, EPAA, or Proclamation No. 3279, as amended, who is adversely affected by an order or interpretation issued by the FEA or a State Office.

3. Section 205.12 is amended in paragraph (a) by adding subparagraph (9) as follows:

§ 205.12 Addresses for filing documents with the FEA.

(a) * * *

(9) Documents to be filed with the Director of Oil Imports, as provided in this part or otherwise, shall be addressed as follows: Director of Oil Imports, Federal Energy Administration, P.O. Box 7414, Washington, D.C. 20044.

* * * * *

4. Section 205.13 is amended in paragraph (a) by adding subparagraph (13) as follows:

§ 205.13 Where to file.

(a) * * *

(13) Allocations, fee-paid and fee-exempt licenses issued pursuant to Part 213 of this chapter.

* * * * *

5. Section 205.50 is amended in paragraph (a) (1) as follows:

§ 205.50 Purpose and scope.

(a) (1) This subpart establishes the procedures for applying for an exception from a regulation, ruling or generally applicable requirement based on an assertion of serious hardship or gross inequity and for the consideration of such application by the FEA, except that applications for an exception from a regulation, ruling, or generally applicable requirement under Part 213 shall be based on the provisions of paragraph (a)(2) of this section.

(2) (i) The FEA, in considering an application for an exception by a person affected by Part 213, may, without regard to the limits of the maximum levels of imports established in section 2 of Proclamation No. 3279:

(A) Modify on grounds of exceptional hardship, any import allocation made to any person under Part 213 of this chapter;

(B) Grant allocations of imports of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under Part 213 of this chapter;

(C) Grant allocations of imports of finished products on grounds of exceptional hardship;

(D) Grant allocations of imports of crude oil, unfinished oils and finished products to independent refiners or established independent marketers who are experiencing exceptional hardship, or in emergencies in order to assure, insofar as practicable, that adequate supplies are available; and

(E) Grant refunds, in whole or in part, of license fees paid by persons to whom licenses were issued for imports which they subsequently became entitled to make on a fee-exempt basis.

(ii) Licenses issued pursuant to allocations made under this subparagraph shall be exempt from license fees prescribed in paragraph (c) of § 213.35 of this chapter, but shall be subject to the supplemental fees prescribed in paragraph (d) of § 213.35 of this chapter.

* * * * *

6. Section 205.54 is amended by adding paragraph (e) as follows:

§ 205.54 Contents.

* * * * *

(e) Applications for exceptions to be considered pursuant to § 205.50(a)(2) shall contain the information specified in the Appendix to this subpart, in addition to non-duplicative information required under this section.

7. Section 205.55 is amended in paragraph (a)(1) as follows:

§ 205.55 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. With respect to applications to be considered pursuant to § 205.50(a)(2), the Office of Exceptions and Appeals shall forward to the Director of Oil Imports copies of all submissions to it, and shall provide the Director opportunity to comment on the application. The FEA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the FEA may consider any other source of information. The FEA on its own initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application.

* * * * *

8. An appendix is added at the end of subpart D as follows:

APPENDIX—APPLICATIONS FOR EXCEPTIONS BY PERSONS AFFECTED BY PART 21

1. *Contents of application.* Applications to be considered pursuant to § 205.50(a)(2) shall contain the following, as well as non-duplicative information required pursuant to § 205.54:

(a) Information required under section 2 or 3 of this Appendix, as appropriate; and

(b) Responses, as appropriate, to the guidelines set out in section 4 of this Appendix for evaluating applications.

2. *Applications for Allocations of finished product.* In order to process applications for finished product import allocations, the FEA requires the information set forth below. Quantity figures should be stated in terms of gallons and in terms of barrels, unless otherwise specified.

(1) Full name of applicant, address of principal office and name and telephone number of company official responsible for the petition.

(2) Company ownership. If applicant is not a sole proprietorship, list all companies, individuals or stockholders possessing 10 percent or more of company ownership or stock.

(3) The relief requested (expressed in barrels per day and total barrels), the particular commodity requested, and the specific period for which relief is requested.

(4) All domestic subsidiaries and affiliates, if any, in which applicant holds an interest of 15 percent or more.

(5) Market area, specifying Districts, in which applicant, its subsidiaries or affiliates operate.

(6) All brand names which applicant, its subsidiaries or affiliates use in marketing products.

(7) State whether applicant, its subsidiaries or affiliates sell products to (a) motorists, (b) home owners, (c) industrial and other commercial accounts, (d) governmental agencies, (e) farmers, and (f) independent marketers for resale without brand names or under brand names different from the brand name(s) used by applicant, its subsidiaries or affiliates.

(8) State for each of the last 3 years applicant's gross sales separately by product for the particular product(s) which are the subject of the application, and, where such sales are made, specify figures for: (a) gasoline, (b) No. 2 fuel oil, (c) residual fuel oil, (d) other products or services (Estimate where appropriate). Also state gross sales to date and estimates for the balance of the current allocation period.

Calendar year	Quantity			
	Gallons	Barrels	Barrels per day (average)	Dollars

With respect to (a) gasoline and (b) No. 2 fuel oil, state the approximate percentages of those gross sales which were made to the various types of customers described in item 7 above.

(9) List actual and/or prospective suppliers for the current allocation period of the product(s) for which an import allocation is sought. Indicate the quantities already obtained as well as offered or expected during the allocation period and the delivered price:

Supplier	Quantity			Delivered price per gallon
	Gallons	Barrels	Barrels per day (average)	

State which of the above supplies are subject to (a) long-term contracts (6 months or longer), (b) short-term or ever-green contracts, and (c) spot purchases.

(10) List past suppliers of the product(s) for which import allocations are sought in each of the last 3 years, the quantity supplied, and delivered price:

Calendar year	Supplier	Quantity supplied			Delivered price per gallon
		Gallons	Barrels	Barrels per day	

State which of the above supplies were subject to (a) long-term contracts (6 months or longer), (b) short-term or ever-green contracts, and (c) spot purchases. If past suppliers terminated any supply contracts or allocated deliveries for the current year, state the name(s) of such supplier(s), the circumstances of contract termination, and the actual amount by which deliveries were or will be reduced.

(11) State, showing docket number, all previous filings with the Oil Import Appeals Board or the FEA in the present and 3 preceding year, all awards received as a result of these filings, and the amounts imported, exchanged, or otherwise obtained by the authority of such awards. Unused awards should be explained.

(12) List all suppliers contacted for the product(s) for which import allocations are sought for the current allocation period who did not offer any product or offered it at noncompetitive prices:

Supplier	Quantity offered		Delivered price per gallon
	Gallons	Barrels	

Provide any responses from suppliers which are or may be in violation of any government sponsored allocation program.

(13) State average selling price for the product(s) for which import allocations are sought in each of the last 3 years and in the current year:

Calendar year	Product(s)	Average price per gallon

(14) State operating costs (per gallon) for the product(s) for which import allocations are sought in each of the last 3 years, and an estimate of such costs for the current year. Give a detailed breakdown of such costs:

Calendar year	Product(s)	Operating costs

(15) State inventory of the product(s) for which import allocations are sought on the last day of December of each of the last 3 years:

Calendar year product(s)	Inventory	
	Gallons	Barrels

(16) List and describe storage facilities, transportation equipment, and any other equipment or installations relevant to the petroleum industry owned or controlled by applicant, its subsidiaries or affiliates. State whether products are supplied to applicant by tanker, barge, pipeline, railroad, or motorized equipment.

(17) If applicant, its subsidiaries or affiliates supply retail outlets or service stations which they own or lease, or which sell products under a trade name owned or controlled by applicant, its subsidiaries or affiliates, state the average number of such retail outlets and service stations supplied during each of the last 3 years and in the current year.

(18) State, in dollars, for each of the last 3 years, the after-tax profit or loss record of applicant, its subsidiaries and affiliates, and an estimate of such profit or loss for the current year. Indicate whether these figures cover calendar or business years. Separate, if possible, profits or losses on product(s) for which import allocations are sought and profits or losses on other products and services. (Estimate, if necessary.) With respect to total profits or losses, state what percentages of total sales and service revenues they represent:

Year	Profit or loss on product(s) for which import allocations are sought	Profit or loss on other products and services	Total profit or loss	Percent of total revenues from sales and services

(19) State for each of the last 3 years on the basis of the respective balance sheets or profit-and-loss statements of applicant, its subsidiaries and affiliates:

(i) Net worth or stockholders equlty;

(ii) The amount of retained earnings;

(iii) Ratio of current assets to current liabilities;

(iv) Long-term debts;

(v) State the cost of applicant's investment, if any, during the current and last allocation periods, in new or substantially improved petroleum related facilities, together with a brief description of such facilities;

(vi) If applicant is a corporation, the amounts paid out in dividends.

(20) Name the principal competitors of applicant, its subsidiaries and affiliates, in the business of marketing petroleum products. (Depending on size of applicant's operations, not more than five to ten competitors should be named.)

3. *Applications for Allocations of Crude Oil and Unfinished Oils.* In order to process applications for allocations of crude oil and unfinished oils, the FEA requires the information set forth below. Quantity figures should be stated in terms of gallons and in terms of barrels, unless otherwise specified.

(1) Full name of applicant, address of principal office and name and telephone number of company official responsible for petition.

(2) Company ownership. If applicant is not a sole proprietorship, list all companies, individuals or stockholders possessing 10 percent or more of company ownership or stock.

(3) The relief requested (expressed in barrels per day and total barrels), and whether the request is for offshore or Canadian crude oil, or for unfinished oils, or both, and the specific period for which relief is requested.

(4) All domestic subsidiaries and affiliates, if any, in which applicant holds an interest of 15 percent or more.

(5) Location and rated capacity of each domestic refinery owned or controlled by applicant.

(6) Average daily inputs of each refinery listed in item 5 above: (a) Of crude oil and (b) of other raw materials, in each month of the last 3 calendar years, and in each elapsed month of the current allocation period.

(7) From data given in response to item 6 above, calculate and set out the combined daily average inputs of all refineries listed (a) of crude oil and (b) of other raw materials, during each of the last 3 calendar years.

(8) The volumes of (a) crude oil import allocations and (b) finished products import allocations received by the petitioner in the current year and in each of the 3 preceding years from the Office of Oil and Gas, the Oil Import Administration, or the Director, Oil Imports, as the case may be, and the amounts imported, exchanged or otherwise obtained by the authority of such awards. Unused awards should be explained.

(9) State, showing docket number, all previous filings by petitioner with the Oil Import Appeals Board or the FEA in the present and 3 preceding years, all awards received as a result of these filings, and the amounts imported, exchanged or otherwise obtained by the authority of such awards. Unused awards should be explained .

(10) The approximate product yields (as percentage of total production) at each refinery listed ln item 5 above during the current allocation period and the two preceding years.

(11) The number of retail outlets whlch distributed products under a trade name owned or controlled by applicant and the total quantity of gasoline supplied to them during each elapsed quarter of (a) the current allocation period and (b) last year.

(12) The percentages of total production of (a) gasoline, (b) No. 2 fuel oil, and (c) residual fuel oil sold to independent marketers during each quarter of the last calendar year. With respect to each of said product categorles indicate what portions of such sales involved exchanges for finlshed product import licenses that had been issued to independent marketers.

(13) The quantities of (a) gasoline, (b) No. 2 fuel oil, (c) residual fuel oil, and (d) other products sold to, or exchanged for crude oil with, any other petroleum refining company during the last calendar year.

(14) Specify the domestic and foreign sources (indicating company names) of crude oil supplies and other refinery feedstocks obtained by the applicant and the quantities recelved from each, in each of the last 3 years, separated into quantities received pursuant to: (a) Long-term contracts (6 months or longer); (b) Short-term or evergreen contracts; or (c) Spot purchases. Indicate which of these quantities involved the utilization of import licenses issued to the petitioner.

Year	Source of supply	Quantity		Type of contract
		Barrels	Barrels per calendar day	

(15) For each quarter of the last calendar year, list the average effective cost per barrel of applicant's crude oil or other raw material supplies delivered to the refinery.

(16) List actual and/or prospective suppliers for the current allocation period of crude oil and other refinery feedstocks. Indicate the quantities already obtained as well as offered or expected during the current allocation period:

Supplier	Quantity		Delivered price per barrel
	Barrels	Barrels per calendar day	

State which of the above supplies are subject to (a) Long-term contracts (6 months or longer); (b) Short-term or evergreen contracts (c) Spot purchases. To the extent that purchases already have been consummated or contract prices have been fixed, indicate the average effective cost per barrel of such crude oil supplies delivered to the refinery. Indicate also which of the supplies listed in response to this question involve the utilization of import licenses issued to applicant.

(17) State whether applicant is a participant in the government royalty oil program and what quantities have been or are expected to be received during the current allocation period.

(18) List all suppliers contacted for the product(s) for which import allocations are sought for the current allocation period who did not offer any product or offered it at noncompetitive prices.

Supplier	Quantity		Offered delivered price per barrel
	Barrels	Barrels per calendar day	

Provide the Board with any responses from suppliers which are or may be in violation of any government sponsored allocation program.

(19) A brief description of ownership participation of applicant in crude pipelines (including gathering systems), in finished product pipelines, and in inland water transportation equipment.

(20) Type and capacity of crude oil storage facilities at each refinery listed in item 5 above at the time of submitting the application and a brief description of mode of crude oil delivery to such facilities (pipeline, tanker, barge, railroad, etc.).

(21) Crude oil inventory at each refinery listed in item 5 above at the time of filing of the petition.

(22) Submit the following financial information. State whether the data cover calendar or business years, and whether figures are calculated before or after Federal Income Tax. Publicly held corporations should submit copies of the latest annual stockholders' report.

(i) What proportion, in terms of dollars, of applicant's total income is derived from its petroleum business, specifying the amount of income from:

(a) Refining crude oil.

(b) Production of crude oil.

(c) Domestic distribution of finished product, i.e., gasoline, fuel oil, etc.

(ii) State applicant's total net profits or losses as well as its net profits or losses from its petroleum business for each of the last 3 years.

(iii) State the percentage which such total profits represent:

(a) Measured on net worth.

(b) Measured on sales.

(iv) State the amount of petitioner's retained earnings.

(v) State applicant's ratio of current assets to current liabilities.

(vi) State the cost of applicant's investment, if any, during the current and last allocation periods, in new or substantially improved petroleum related facilities, together with a brief description of such facilities.

4. *Guidelines for Evaluating Applications by Persons Affected by Part 213.* In evaluating applications to be considered under § 205.50 (a) (2), the FEA will make reference to the following guidelines as may be appropriate. As provided in Section 1 of this Appendix, each application shall contain responses to these guidelines as appropriate.

(a) An applicant:

(1) Must be established and in operation;

(2) Must demonstrate that its total oil operations are not producing a reasonable profit but did so in the past;

(3) Must be unable to obtain sufficient supply at economic prices to meet its normal requirements;

(4) Must demonstrate that it has made diligent efforts to obtain needed supplies;

(5) Must demonstrate that payment of the license fee will cause it an exceptional hardship;

(6) If possessing an import capability, must demonstrate to the satisfaction of the FEA that it is not feasible for it to alleviate its hardship by means of exchange agreements involving the use of licenses already granted to others who do not have an import capability;

(7) Must demonstrate to the satisfaction of the FEA its ability to utilize import allocations to obtain supplies through license exchange or direct import;

(8) If in control or possession of domestic crude oil production, must agree to make supplies of crude oil available in reasonable quantities and at economic prices, to established independent customers;

(9) If in the business of wholesaling products to resellers, must agree to make supplies of products available in reasonable quantities and at economic prices to established independent customers;

(10) Must demonstrate that it is taking, or planning to take, effective action to establish an economically feasible supply to maintain its operations;

(b) In making determinations with respect to granting exceptions, the FEA will consider, among other things, the situation of the applicant's customers and of the community concerned as well as the public interest in preserving the independent segment of the petroleum industry.

9. Section 205.70 is amended to read as follows:

§ 205.70 Purpose and scope.

This subpart establishes the procedures for filing an application for exemption and the consideration of such by FEA. The applicant must be seeking an exemption from no less than an entire part, or subpart thereof, of this chapter. This subpart does not include the procedures for exemption of a product as provided in § 4(g) of the EPAA, and does not provide for exemptions from Part 213.

10. Section 205.100 is amended to read as follows:

§ 205.100 Purpose and scope.

(a) (1) This subpart establishes the procedures for the filing of an administrative appeal of FEA actions taken under Subparts B, C, D, E, F, G, O, or S of this part, Subpart I of Part 212 of this chapter or actions of the Director of Oil Imports specified in paragraph (a) (2) of this section, and the consideration of such appeal by the FEA. Appeals of orders issued by State Offices shall be in accordance with Subpart R.

(2) Actions of the Director of Oil Imports subject to appeal under this subpart are:

(i) Actions taken erroneously on applications for allocations of imports under Part 213 of this chapter; and

(ii) Denial of refunds pursuant to § 213.35(e) of this chapter of license fees, whether in whole or in part, theretofore paid by a person.

(b) A person who has appeared before the FEA in connection with a matter arising under Subparts B, C, D, E, F, G, O, or S of this part, Subpart I of Part 212, or actions of the Director of Oil Imports specified in paragraph (g) (2) of this section, has not exhausted his administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued.

11. Section 205.101 is amended to read as follows:

§ 205 Who may file.

Any person aggrieved by an order or interpretation issued by the FEA under Subparts B, C, D, E, F, G, O, or S of this part, Subpart I of Part 212, or actions of the Director of Oil Imports specified in § 205.100(a) (2) may file an appeal under this subpart.

12. Section 205.105 is amended by adding paragraph (e) as follows:

§ 205.105 Contents.

* * * * *

(e) Appeals of actions specified in § 205.100(a) (2) shall contain, in addition to non-duplicative information required under this section:

(1) Information required under section 2 or 3 of the Appendix to Subpart D, as appropriate:

(2) responses, as appropriate, to the guidelines in section 4 of the Appendix to Subpart D.

13. Section 205.106 is amended in subparagraph (1) of paragraph (a) as follows:

§ 205.106 FEA evaluation.

(a). *Processing.* (1) The FEA may initiate an investigation of any statement in an appeal and utilize in its evaluation any relevant facts obtained by such investigation. With respect to appeals of actions specified in § 205.100

(a)(2), the Office of Exceptions and Appeals shall forward to the Director of Oil Imports copies of all submissions to it, and shall provide the Director opportunity to comment on the appeal. The FEA may solicit and accept submissions from third persons relevant to any appeal provided that the appellant is afforded an opportunity to respond to all third person submissions. In evaluating an appeal, the FEA may consider any other source of information. The FEA on its own initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal.

* * * * *

14. Section 205.172 is amended in paragraph (a) to read as follows:

§ 205.172 Hearings.

(a) The FEA in its discretion may direct that a hearing be convened on its own initiative or upon request by a person, when it appears that such hearing will materially advance the proceedings. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of FEA, but a hearing will usually not be open to the public. Where the hearing involves a matter arising under Part 213 of this chapter, the Director of Oil Imports shall be notified as to its time and place, in order that he or his representative may present views as to the issue or issues involved.

* * * * *

15. Section 205.190 is amended in paragraph (a) to read as follows:

§ 205.190 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations of the FEA regulations and the procedures for issuance of a notice of probable violation, a remedial order or a remedial order for immediate compliance, except that it shall not apply with respect to violations of Part 213 of this chapter.

* * * * *

16. A new section 205.204 is added to read as follows:

§ 205.204 Exemption.

The provisions of this subpart shall not apply with respect to investigations, violations, sanctions and judicial action under Part 213 of this chapter.

17. A new Subpart S is added to Part 205 as follows:

Subpart S—Revocation and Suspension of Allocations and Licenses Issued Pursuant to Part 213

§ 205.240 Purpose and scope.

(a) This subpart establishes the procedures for the revocation or suspension by the Director of Oil Imports of any allocation or license issued under Part 213 of this chapter to import crude oil, unfinished oils, or finished products.

(b) An allocation or license may be revoked or suspended under this Subpart:

(1) On grounds relating to the national security; or

(2) For violations of the terms of Proclamation No. 3279, as amended, the provisions of Part 213 of this chapter, or the provisions of allocations and licenses issued pursuant thereto.

(c) In any proceeding under this subpart, where the Director intends that an allocation or license be suspended or revoked on grounds relating to the national security, the Director shall consult with the Secretaries of State, Treasury, and Defense, as appropriate.

§ 205.241 Notice.

(a) The Director may begin a proceeding under this subpart by issuing a notice that he intends to revoke or suspend any allocation or license. The notice shall contain a statement of the grounds upon which the Director intends to take such action.

(b) Within 10 days of the service of a notice under paragraph (a), the person upon whom the notice is served may file a reply with the Director at the address provided in § 205.12. The Director may extend the 10-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the notice. Such facts shall include a complete statement of the business or other reasons that justify the act or transaction, if appropriate; a detailed description of the act or transaction; and a full discussion of the pertinent provisions and relevant facts reflected in any documents submitted with the reply. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the reply. When the notice pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information regarding the entire transaction shall be submitted.

(d) The reply shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations, and decisions on appeals and exceptions relied upon to support the particular position taken.

(e) The reply should indicate whether the person requests or intends to request a conference regarding the notice. Any request not made at the time of the reply shall be made as soon thereafter as possible to insure that the conference is held when it will be most beneficial. A request for a conference must conform to the requirements of Subpart M of this part.

(f) If a person has not filed a reply with the Director within the 10-day period provided, and the Director has not extended the 10-day period, the person shall be deemed to have conceded the accuracy of the factual allegations and legal conclusions stated in the notice.

(g) If the Director finds, after the 10-day period provided in paragraph (b) of this section, that no grounds exist upon which to revoke or suspend the allocation or license, he shall notify, in writing, the person to whom a notice under paragraph (a) of this section has been issued that the notice is rescinded.

§ 205.242 Revocation or suspension.

(a) If the Director finds, after the 10-day period provided in § 205.241(b), that grounds for revocation or suspension exist, he shall, as appropriate, issue an order revoking or suspending the allocation or license. The order shall include a written opinion setting forth the relevant facts and the legal basis of the order.

(b) An order issued under this section shall be effective upon issuance, in accordance with its terms, until stayed, suspended, modified, or rescinded. An order shall remain in effect notwithstanding the filing of an application to modify or rescind under Subpart J of this part.

§ 205.243 Order for immediate revocation or suspension.

(a) Notwithstanding the provisions of §§ 205.241 and 205.242, the Director may issue an order for immediate revocation or suspension, which shall be effective upon issuance and until rescinded or suspended, if he finds, after consultation in accordance with § 205.240(c), that such immediate action is necessary in the interest of national security.

(b) An order of immediate revocation or suspension shall be served promptly upon the person against whom such order is issued by telex or telegram, with a copy served by registered or certified mail. The copy shall contain a written statement of the revelant facts and the legal basis for the order, including the findings required by paragraph (a) of this section.

(c) The Director may rescind or suspend an order of immediate revocation or suspension if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a notice issued under § 205.241.

(d) If at any time in the course of a proceeding commenced by a notice under § 205.240 the criteria set forth in paragraph (a) of this section are satisfied, the Director may issue an order for immediate revocation or suspension, even if the 10-day period for reply specified in § 205.241(b) has not expired.

§ 205.244 Appeal.

(a) No notice issued pursuant to § 205.240 shall be deemed to be an action of which there may be an administrative appeal pursuant to Subpart H of this part.

(b) Any person to whom an order is issued under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 10 days of service of the order from which the appeal is taken.

§ 205.245 Consent orders.

(a) Notwithstanding any other provision of this Subpart, the Director may at any time resolve an outstanding proceeding of suspension or revocation with a consent order. A consent order must be signed by the person to whom it is issued, or a duly authorized representative, and must indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that Proclamation No. 3279, as

amended, Part 213 of this chapter, or the provisions of allocations and licenses issued pursuant thereto have been violated, nor need it constitute a finding by the FEA that such has violated the Proclamation, Part 213 of this chapter, or the provisions of any allocations or licenses. A consent order shall, however, contain a written statement setting forth the relevant facts forming the basis for the order.

(b) A consent order is a final order of the FEA, and shall not be subject to administrative appeal.

(c) At any time and in accordance with the procedures of Subpart J of this part, a consent order may be modified or rescinded, at the Director's discretion, upon petition by the person to whom the consent order was issued and may be rescinded by the FEA upon discovery of new evidence which is materially inconsistent with evidence upon which the Director's acceptance of the consent order was based.

(d) If any time after a consent order becomes effective, it appears to the FEA that the terms of the consent order have been violated, the Director may proceed in accordance with this Subpart to suspend or revoke the appropriate allocations and licenses.

PART 206 [RESERVED]

18. Part 206 is vacated and reserved.

PART 213—OIL IMPORT REGULATIONS

19. Sections 213.25 and 213.26 are revised to read as follows:

§ 213.25 Revocation or suspension of allocations or licenses.

Effective August 1, 1975, the Director may, in accordance with Subpart S of Part 205 of this chapter, revoke or suspend any allocation or license issued under this Part. Proceedings pending for this purpose on August 1, 1975 shall be deemed, in all respects, to be pending under Subpart S of Part 205 of this chapter.

§ 213.26 Oil Import Appeals Board.

Effective August 1, 1975, the Oil Import Appeals Board is abolished, and alternative appellate procedures with respect to persons affected by this Part 213 are established in Part 205 of this chapter. Cases pending before the Board on that date shall, in all respects, be deemed to have been pending in the Office of Exceptions and Appeals. Outstanding awards made by the Board shall be unaffected by this action.

21. Section 213.27 is amended in paragraph (s) to read as follows:

§ 213.27 Definitions.

* * * * *

(s) "Fee" means the fees imposed by section 3(a)(1)(i)–(ii) of Proclamation No. 3279, as amended by Proclamation No. 4341. Allocations of imports issued pursuant to §§ 213.9, 213.10, 213.11, 213.12, 213.13, 213.15, 213.16, 213.20, 213.21, 213.28, 213.29, 213.30, 213.32, 213.33, 213.34, 213.36, 213.37, and 213.38, allocations issued by the former Oil Import Appeals Board or the Office of Exceptions and Appeals, and long term allocations as defined in Proclamation No. 3279, are not subject to this fee.

§§ 213.28, 213.33, 213.34 [Amended]

22. In §§ 213.28, 213.33, and 213.34 the reference to "§ 213.26" is amended to read "§ 213.26 (prior to the abolition of the Oil Import Appeals Board)" wherever it appears.

23. Section 213.35 is amended in paragraph (e)(3)(ii) to read as follows:

§ 213.35 Allocations and fee-paid licenses for imports of crude oil, unfinished oils, and finished products.

* * * * *

(e) * * *

(3) * * *

(ii) Where refunds of license fees, whether wholly or in part, were ordered by the former Oil Import Appeals Board or by the Office of Exceptions and Appeals.

* * * * *

[FR Doc.75-17545 Filed 7-1-75;5:02 pm]

[10 CFR Part 213]

MANDATORY OIL IMPORT PROGRAM

Proposed Amendments To Conform Regulations With Proclamation 4377

On May 27, the President issued Proclamation No. 4377 (40 FR 23429, May 30, 1975) amending Proclamation No. 3279, as amended, which establishes the Mandatory Oil Import Program. The purpose of the new Proclamation is to increase the supplemental fee on imported oil from $1.00 to $2.00, and to establish the fee on most petroleum products at $0.60 per barrel, effective June 1, 1975. In a notice of rulemaking issued June 4, the Federal Energy Administration (FEA) issued regulations on an emergency basis in order to implement the fee increase. However, it was pointed out in that notice that the Proclamation contains certain other provisions which do not need to be implemented on an emergency basis and which are appropriate for public comment prior to the adoption of implementing regulations. Accordingly, FEA hereby proposes to amend §§ 213.26 and 213.35, effective June 1, 1975, in order to implement these provisions.

Proclamation No. 4377 includes an amendment to Proclamation No. 3279, as amended, to provide that in calculating the amount of tariffs for which an equivalent sum can be refunded from fees paid, duty drawback shall be subtracted from tariffs only with respect to drawback on imports entered into United States customs territory after February 1, 1975, the date on which the system of supplemental fees took effect. In addition, Proclamation No. 4377 authorizes the Administrator of the Federal Energy Administration to modify the composition of the Oil Import Appeals Board, which is presently made up of members from FEA and the Departments of Justice and Commerce, or to abolish the Board and establish such other appellate procedures as he deems appropriate. FEA is studying the disposition of the Board, and while no regulations implementing this authority are proposed at this time, FEA expects to publish such regulations shortly.

Finally, Proclamation No. 4377 authorizes FEA to provide for bonding procedures for outstanding licenses "for which a bond was not required or . . . was required in amounts less than the full amount of the fees" now in effect. The need for new bonding procedures arises out of the increases in supplemental fees on crude oil from $1.00 to $2.00, and on product imports from zero to $0.60. Under present regulations, FEA requires that with respect to licenses issued on or after June 1, bonds be posted in the full amount of the liability. However, since licenses issued before the June 1 are covered by bonds in the amount of $1.00, or by no bond where the zero fee applied, and since these licenses continue to be valid for some time, existing licenses on which the increased fees are payable will be covered by no bond, or by a bond less than the full amount of the fees. Therefore, it has become necessary to develop adequate procedures to protect the Government against default on payment of fees.

In accordance with these sections of the Proclamation, FEA proposes two changes in existing oil import regulations.

First, FEA proposes that in calculating pursuant to § 213.35(e)(2)(i) the amount of tariffs for which an equivalent sum can be refunded from fees paid, duty drawback shall be subtracted from tariffs only with respect to drawback on imports entered into United States customs territory after February 1, 1975.

Second, FEA proposes that § 213.35(d)(3)(i) be amended to provide that within sixty days of the publication of a final regulation, holders of licenses for which bonds were not required, or required in amounts less than the full amount of the fee applicable June 1, 1975, shall be required to obtain a bond or increase outstanding bonds to cover the full amount of such fee. Failure to comply shall result in immediate revocation of the affected licenses.

FEA studied numerous solutions to the problem of protecting the Government against default on payment of the increased fees, and has determined that this approach appears to be the most equitable. In formulating the new bonding procedure, FEA had to take account of the fact that the administrative remedy for failure to pay a license fee is cancellation of an importer's license after opportunity for notice and a hearing. Failure to comply does not ordinarily permit the Bureau of Customs to refuse entry to the imports until the appropriate administrative procedures have been followed. In view of these considerations, FEA believes that requiring a

bond for the full amount of outstanding liability is the best assurance against default. Under the proposed regulation, however, importers would be afforded sixty days from the date of final publication to comply with this requirement, in order to provide sufficient lead-time.

Interested persons are invited to submit written data, views or arguments with respect to these amendments to Executive Communications, Room 3309, Federal Energy Administration, Box DJ, The Federal Building, Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to the Federal Energy Administration with the designation "Conforming Regulations to Presidential Proclamation No. 4377—Set II." Fifteen (15) copies should be submitted. All comments received by 4:30 p.m., e.d.s.t., July 21, 1975, will be considered by the Federal Energy Administration in evaluating the amendments.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

The public hearing with respect to these amendments will be held beginning at 9:30 a.m., e.d.s.t., on July 15, 1975, and will be continued, if necessary, on July 16, 1975, in room 2105, 2000 M Street, NW, Washington, D.C. These are the same dates on which the hearings on the regulations implementing the June 1 fee increases will be held.

Any person who has an interest in these amendments, or who is a representative of a group or class of persons which has such an interest, may make a written request for an opportunity to make oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., e.d.s.t., July 10, 1975. Such a request may be hand delivered to room 3309, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he may be contacted through July 11, 1975. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., e.d.s.t., July 9, 1975, and must submit 100 copies of his statements to Executive Communications, FEA Room 2214, 2000 M Street, NW, Washington, D.C., 20461, before 4:30 p.m., e.d.s.t., July 14, 1975.

The FEA reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if he so desires to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions, to be asked of any person making a statement at the hearings to Executive Communications, FEA, before 4:30 p.m., e.d.s.t., July 11, 1975. Any person who makes an oral statement and who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearings, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection in the Administrator's Reception Area, Room 3400, FEA; Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In accordance with the provisions of section 7(c)(2) of the Federal Energy Administration Act of 1974, which provide for submission of proposed rules for comment by the Administrator of the Environmental Protection Agency, these amendments have been appropriately reviewed. The Administrator has advised FEA that he has no comment.

Finally, this proposal has been reviewed in accordance with Executive Order 11821 and OMB Circular No. A-107 and has been determined not to require evaluation of its inflationary impact as provided therin.

[Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185; Trade Expansion Act of 1962, Pub. L. 87-794, as amended; Proclamation No. 3279, 24 FR 1781, as amended by Proclamation No. 4210, 38 FR 9645, Proclamation No. 4227, 38 FR 16195, Proclamation No. 4317, 38 FR 35103, Proclamation No. 4341, 40 FR 3956, Proclamation No. 4355, 40 FR 10437, and Proclamation No. 4370, 40 FR 19421, and Proclamation No. 4377, 40 FR 23429.]

In consideration of the foregoing, it is proposed that Part 213 of Chapter II, Title 10 of the Code of Federal Regulations be amended as set forth below, effective June 1, 1975.

Issued in Washington, D.C., June 30, 1975.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

1. Section 213.35(d)(3)(i) and (e)(2)(i) as follows:

§ 213.35 Allocations and fee-paid licenses for imports of crude oil, unfinished oils, and finished products.

* * * * *

(d) * * *

(3)(i) With respect to licenses issued prior to February 1, 1975, not subject to the license fees prescribed in paragraph (c) of this section or licenses issued by prepayment of such fees, payment of the fees prescribed in this paragraph (d) shall be made no later than the last day of the month following the month in which such imports were released from customs custody or entered or withdrawn from warehouse for consumption, whichever occurs first. With respect to licenses subject to the fees prescribed in paragraph (c) of this section but issued against a surety bond, payment of the fees prescribed in this paragraph (d) shall be made simultaneously with payment of the fees prescribed in paragraph (c) of this section. Holders of licenses for which bonds were not required, or required in amounts less than the full amount of fees applicable June 1, 1975, shall, within sixty (60) days of the publication of this amended § 213.35(d)(3)(i), obtain a bond or increase outstanding bonds (in accordance with the requirements for acceptability under § 213.35(a)(4)) to cover the outstanding liability of the licenses, and furnish such bond or increased bond to the Director. Failure to so obtain or increase the applicable bonds shall result in immediate revocation of all licenses required to be so covered.

* * * * *

(e) * * *

(2) * * *

(i) For payment to the importer of record, on a monthly basis, of sums equal to the sums collected by way of duties found payable upon liquidation, by the United States Customs Service, less any drawbacks received during the same period charged against imports made on or after February 1, 1975, *Provided that,* said importer certifies the amount of applicable drawback. Where the applicable duty drawback exceeds the duty paid during that period, the net difference shall be applied to subsequent periods, *Provided that* when the duty less drawback exceeds the fee imposed, any excess duty may be used to reduce fees payable during the subsequent six months.

[FR Doc.75-17438 Filed 7-1-75;9:20 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[EDR–285A; Docket No. 27769]

TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Dissemination of Simplified Information Describing Available Air Fares; Extension of Comment Period

JUNE 30, 1975.

By Advance notice of proposed rule making EDR–285, dated June 5, 1975, and published at 40 FR 24740, June 10, 1975, the Board gave notice that it has under consideration rule making action to amend Part 221 of its Economic Regulations (14 CFR 221) so as to require U.S. and foreign air carriers to publish and disseminate to the traveling public simplified information relating to their various available fares and their applicable restrictions.

Public comments on this Advance Notice are due July 10, 1975. By motion, filed June 24, 1975, Pacific Western Airlines, Ltd. (Pacific Western) has requested a sixty-day extension of the due date for the filing of comments. Pacific Western states that, as a holder of a foreign air carrier permit, it desires to participate in this proceeding by filing comments with respect to the Advance Notice; that, in order to prepare relevant information for submission to the Board, it is engaged in assembling opinions from persons within its own organization as well as from travel agents and other interested persons in Canada; and that it requires an extension of time to enable its presentation of meaningful comments to the Board.

Consistent with the Board's emphasis, as expressed in EDR–285, on the encouragement of wide-spread and constructive participation in this proceeding by foreign as well as U.S. carriers, the undersigned finds that good cause has been shown for granting some extension of time for filing comments herein, but, since the importance of the problem with which this proceeding deals militates in favor of expeditious receipt and consideration of comments on the Advance Notice, the undersigned finds that an extension for more than thirty days would not be necessary or desirable.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations, the undersigned hereby extends the time for submitting comments to August 11, 1975.

Procedures for review of this action by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324.)

[SEAL] STEPHEN J. GROSS,
Associate General Counsel.

[FR Doc.75–17525 Filed 7–3–75;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 547]

[Docket No. 75–6]

POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Enlargement of Time To File Replies to Comments

JUNE 30, 1975.

Upon request of Hearing Counsel and good cause appearing, time within which replies to comments may be filed in this proceeding (40 FR 13005, March 24, 1975) is enlarged to and including July 8, 1975. Time within which answers to Hearing Counsel may be filed is enlarged to and including July 25, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75–17533 Filed 7–3–75;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 257]

ADVERTISING OF CHILDREN'S PREMIUMS ON TELEVISION

Request for Additional Comment on Proposed Guide

In connection with its proposed Guide on the Advertising of Children's Premiums on Television (39 FR 25505, July 11, 1974), the Federal Trade Commission has determined, pursuant to the Federal Trade Commission Act, 15 U.S.C. sec. 41, et seq., that public comment on two items would be helpful in its consideration of final action on the Guide.

Those items are:

1. A paper entitled, "Advertising of Children's Premiums on Television: An Experimental Evaluation of the FTC's Proposed Guide," by Terence A. Shimp, Robert F. Dyer, and Salvatore F. Divita under the sponsorship of the George Washington University School of Government and Business Administration; and

2. "Proposed Standards for Advertising Premiums on Children's Television," by the Cracker Jack Division of Borden Foods, Borden, Inc.

In connection with Item 1, the Commission requests comments on its application to the content of any final guide on the advertising of children's premiums that the Commission may issue. In addition, comments are specifically invited on the following questions:

a. What implications, if any, does the sample employed in the paper have for the paper's general applicability to child-directed premium advertising?

b. What implications, if any, do the particular products chosen for experimental evaluation in the paper have for its general applicability to child-directed premium advertising?

c. Is the paper's use of factual recall of product and premium information an appropriate measure of the effect of children's premium advertising?

In connection with Item 2, the Commission requests comments as to whether the "Proposed Standards" are adequate and appropriate to deal with any deceptive or unfair effects that may result from the advertising of child-directed premiums.

The text of both items follows:

I. ADVERTISING OF CHILDREN'S PREMIUMS ON TELEVISION: AN EXPERIMENTAL EVALUATION OF THE FTC'S PROPOSED GUIDE, BY TERENCE A. SHIMP, ROBERT F. DYER, AND SALVATORE F. DIVITA

ABSTRACT

This study constitutes an experimental test of the Federal Trade Commission's proposed ban of child-directed television commercials promoting premiums. The results, in general, are non-supportive of the FTC's position and question the legitimacy of the proposed guide.

INTRODUCTION

The Federal Trade Commission on July 11, 1974 issued a proposed guide requesting the advertising industry to voluntarily discontinue the television advertising of premium offers to children (FEDERAL REGISTER, 1974). The FTC maintained that television advertising of premiums is unfair and produces harmful effects on children. The guide has been received on the one hand with enthusiastic support from various consumerist groups and, on the other, with vehement criticism from the advertising industry. This diversity of stances is readily understandable, however, in that the surrounding issues are complex and inherently vague. Moreover, both "sides" have introduced personal perceptions (often emotionally laden) of the general impact of advertising on children and the specific effect of premiums. Whereas advertisers regard television advertising and premium offers to children as ethically justifiable and commercially sound, many consumerists (and evidently some public policy officials) consider these practices as unfair and invidious.

The FTC's guide, though ostensibly based on sound legal precedent, is devoid of behavioral-based conceptual or empirical support. Moreover, the advertising industry has failed to adequately substantiate its side of the argument. Fortunately, however, both sides have recognized the need for documentation. For example, the president of the Gene Reilley Group, which measures pre-teen attitudes and behavior, stated in a speech before the Premium Advertising Association of America's 41st Annual Premium Show that both sides of the argument need to document their positions (Green, 1974). Further, an undisclosed FTC source was recently quoted in *Advertising Age* as stating: "What we are looking for is information which will persuade us that it is possible to devise guidelines which insure that the commercial sells a product rather than a premium . . . ("FTC Seeking Data . . ." 1974, p. 86).

The study reported here represents an initial effort to empirically test the legitimacy of the FTC's proposed premium guide.[1] Two harmful effect propositions presented as facts in the FTC's guide were operationalized and tested. Television commercials for a hypothetical cereal product were developed and administered to first-through-sixth grade school children. Recall, attitudinal, and brand choice measures were obtained. In general, the study's findings are non-supportive of the FTC claims.

The research methodology and findings are described below, but initially a review of the FTC's proposed guide is provided as a reference for explaining the research procedure.

THE FTC'S GUIDE: TELEVISION ADVERTISING OF PREMIUMS TO CHILDREN

The proposed guide provides recommended industry practices concerning television advertising of child-directed premium and similar promotional devices. The specific provisions of the guide may be summarized as follows (FEDERAL REGISTER, 1974, p. 25505): [2]

(1) It is restricted to television advertising directed to children under the age of twelve. Other media are not affected at this time, and the practice of premium merchandising, per se, is not the target of the guide.

(2) In such advertising, the advertiser is not to refer to an offer of a premium or other promotional device unrelated to merits of product or service being promoted.

(3) The guide encompasses any form of premium (including reusable product containers) and any form of remuneration (including free premium gifts as well as self-liquidating types).

The apparent motivation for the guide is the Commssion's belief that television advertising of premiums is inherently unfair and has harmful effects on children. In fact a "per se" argument was employed as embodied in the statement: "* * * the conclusion is justified that the entire class of advertising in such a powerful medium as television is *unfair per se* even if it cannot be said with certainty that every premium advertising produces a particular result in every child subjected to its influences" (p. 25510, emphasis added). More specifically, the FTC posed the following harmful effects of premium advertising on children:

Distraction Effect. "* * * the premium's main purpose is to distract the buyer's attention from those criteria which would guide choice if the product stood alone and to motivate purchase not on the merits of the product but in order to obtain the premium" (p. 25509).

Difficulty of Choice Effect. "The injection of a premium into a buying decision cannot help but multiply the difficulties of choice . . . Merely by adding another group of factors that compete with those already demanding the child's attention, the premium must inevitably increase the likelihood of confusion and of the purchase of an inferior product" (p. 25509).

Necessary Effect. "That child-directed premiums on television offend the policy of special protection for children is evident from consideration of several factors. It is sufficient to merely consider the necessary effect of the premium offer on the particular vulnerable audience to which it is addressed in order to demonstrate its unfairness" (p. 25507).[3]

Although the FTC's proposed guide has presented these "harmful effects" as facts, they are, instead, merely propositions which can be operationalized into hypotheses and empirically tested. The study reported here has operationalized and tested two of these harmful effect propositions. Specifically: (1) Does the inclusion of a premium portion in a television commercial *distract the child's attention* from merits of the principal product? (2) Is the *necessary effect* of the premium offer to cause children to purchase or want to purchase the advertised product? [4]

RESEARCH DESIGN

Overview. A parochial school in a Washington, D.C. suburb volunteered to participate in the study, and 197 first-to-sixth grade children were employed in the experiment. Television commercials were constructed for a hypothetical cereal product named Snappy Fruit Smacks developed specifically for the purpose of the study. Four versions of a 30-second TV commercial were prepared: a *control* commercial which only presented information concerning the cereal (i.e., product information) and three *experimental* ads which included both product and premium information—the three experimental ads varied only with respect to the length of time within the 30-second spot devoted to premium presentation. The premium object was a National Football League (NFL) team patch.

Each of the four commercial versions was presented to a separate treatment group. Students within the four treatment groups were matched on age and sex. Additionally, teachers consented to judgementally assign students to the treatment groups with the intent of balancing each group's cognitive ability (both memory and verbal comprehension measures were used). Each group was exposed to the following information on videotape: a five minute cartoon, the 30-second cereal commercial, and a one minute public service announcement on pet care. This procedure was employed in order to provide an element of realism to the experiment.

Immediately post-exposure, children were measured for their recall of specific features of the commercial. Also, the researchers measured attitudes toward Snappy Fruit Smacks and toward the NFL football patch premium. Further, a simulated purchase setting was used to evaluate each child's brand choice preference for Snappy Fruit Smacks compared to two well-known breakfast cereals.

With this brief overview of the research procedure, a detailed explanation of each aspect of the research design is now provided. Discussion will concentrate on: technical features of the research procedures (such as choice of product and development of experimental advertisement); specification and operational measures of research variables; hypotheses; and the data collection procedure.

Technical Features of Research. Several considerations influenced the choice of a product for this study. It was important to select a product that is illustrative of actual advertising to children, which does influence children, and which would maintain the interest of all participating children, regardless of age. The selection of a breakfast cereal is justified on the grounds that past research has indicated cereal along with toys are the most heavily promoted products to children ("Putting the Lid . . . ," 1971; Barcus, 1971). Moreover, research by Ward (1972) has revealed that mothers feel cereal commercials influence their children. Finally, the researchers felt that experimentation with a cereal product would be consistent with the widespread use of premium offers for children's food products.

In order to prevent any bias resulting from past experience or preference for a cereal brand currently on the market, a hypothetical brand was developed and special TV commercials were constructed for the study. The experimental product was named Snappy Fruit Smacks, and the selling propositions presented in the commercials were that it was a new cereal available in three shapes and flavors (orange, apple, and cherry) which could be mixed together in the bowl.

It is significant to note that the selling propositions were chosen to be relatively simple and perceptual in nature. Research in the area of cognitive development and consumer socialization (e.g., Ward, 1974; Ward and Wackman, 1973) has indicated that younger children with relatively simple cognitive structures (so-called preoperationals, roughly ages 2–7) have a tendency to be perceptually bound in processing stimuli and are more likely to focus on visual characteristics of message stimuli rather than on the more abstract meaning properties of message content. In effect, then, the experimental commercials were constructed so as not to exceed the cognitive capabilities of the first, second, and perhaps third graders participating in the study.

The premium portion of the three experimental commercials was introduced at the end of each commercial. This segment was constructed to be as structurally similar to the product presentation as possible. A National Football League team patch was selected as the premium item, and the commercial informed the children that they would receive a free patch in every box of Snappy Fruit Smacks. The commercials also indicated that the patches were available for three different teams and could be used in a variety of ways (applied to clothes, attached to books, etc.).

Specification of Variables, Operational Measures, and Hypotheses. As previously discussed, the study was designed to test whether a premium in a TV commercial has the effect of distracting the child's attention from the principal merits of the product, and whether the necessary effect of a premium is to cause the child to purchase or want to purchase the advertised product. The variables and their operational measures used to test these propositions are discussed below.

Distraction Proposition. The underlying assumption of the FTC's distraction proposi-*Measures, and Hypotheses.* As previously diverted from the product or non-premium information contained in a commercial and, instead, will focus on the (presumed) more interesting premium stimuli. As such, if this truly is the case, it would be expected that children exposed to a commercial containing only product (i.e., non-premium) information would exhibit more accurate recall of the product information than children exposed to a commercial containing equivalent product information but also including premium information.

The specific impact of a premium-oriented commercial on children's ability to recall product information in unlikely, however, invariant of child-related and premium-related differences. For example, it would be expected that the child's level of cognitive development would affect recall level. Whereas older, concrete operational children are capable of decentration (i.e., the cognitive ability of simultaneously focusing on several dimensions of a situation; see Ward and Wackman, 1973, p. 121), younger, preoperational children have not as yet developed this level of advanced cognitive structure and would, therefore, be more likely to focus on either the product or premium information, but not both: It would be expected that a commercial which presents an interesting premium object would more likely distract preoperational than concrete operational children from processing the non-premium information presented in the commercial.

In like manner, it appears plausible that the length of a TV commercial devoted to the premium would influence the child's ability to recall product information. Specifically, it would be expected that as the ratio of premium time-to-product time in a commercial increases, the child's recall of product information would decrease. In recognition of this factor, the National Association of Broadcasters (NAB) has instituted guidelines which limit the time segment of a commercial which may be devoted to a premium offer. The FTC contends that although the present NAB code limits presentation of the premium offer to

half of the commercial or 20 seconds, whichever is less, staff findings show that this "allows substantial emphasis on the premium." ("Ad Industry Readies Fight * * *," 1974, p. 64.)

Three variables were therefore relevant to this study's test of the "distraction proposition":

Product Information Recall Accuracy. The dependent variable used to assess distraction; operationally measured as the "number of correct recalls" of product information given exposure to varying amounts of product/premium information. Thus, as operationalized, *distraction* represents the inverse of product information recall accuracy.

Stage of Cognitive Development. A predictor variable employed in recognition of the different stages of children's cognitive development. For the purposes of this study, children less than eight years old were arbitrarily regarded as *preoperational,* while eight and over children were considered *concrete operational.*[5]

Length of Commercial Devoted to Premium. This predictor variable was operationalized by constructing four versions of the same basic 30-second commercial: a "control" ad which presented product information only, and three "experimental" ads which devoted 10, 15, and 20 seconds, respectively to presenting premium information.[6] The amount of product and premium information, however, did not vary. It was merely compressed or lengthened depending on the experimental treatment.

It was hypothesized that if the FTC's "distraction effect" claim is legitimate, then:

H_1: The control group (exposed to a commercial containing no premium) would exhibit greater product information recall accuracy, and thus be less distracted, than any of the three experimental groups (each of which was exposed to varying lengths of premium information).

H_2: Concrete operational children would exhibit greater product information recall accuracy, and thus be less distracted, than preoperational children.[7]

Necessary Effects Proposition. The Commission has suggested that premium advertising is demonstrably unfair by merely considering "the necessary effect of a premium offer on the particular audience to which it is addressed * * *" (p. 25507). Though obviously vague, this assertion may be interpreted as implying that premium advertising influences children to purchase or want to purchase the advertised product merely to receive the premium object (see Jacoby, 1974, for similar interpretation). The most direct and conclusive test of this proposition would be accomplished by constructing an experiment to determine whether premium-oriented ads do in fact exert greater influence on a child's purchase attempts than non-premium ads. However, the practical difficulty of collecting actual purchase data necessitated a simpler procedure. Alternatively, attitude and brand choice measures were utilized in this study as indicators of purchase inclination.

Three dependent variables were selected for testing the "necessary effect proposition": (1) attitude toward Snappy Fruit Smacks; (2) attitude toward the NFL team patch premium object; and (3) brand choice preference. Attitudes toward both the experimental product and premium were measured with a five-point "happy face" scale, and brand choice preference was measured by having each child rank Snappy Fruit Smacks and two well-known brands of cereal on a first, second, and third choice basis. Specific features of the attitudinal and brand choice preference measures are described below in the *data collection procedure* section.

The FTC's extremely vague description of the necessary effect proposition demanded a cautious testing approach using multiple methods. Four methods were constructed, and it was hypothesized that if the "necessary effect" claim is legitimate, then:

H_3: Attitude toward the premium object (NFL patch) and attitude toward the brand (Snappy Fruit Smacks) would be positively correlated.

H_4: Children exposed to the premium versions of the commercial would have more favorable attitudes toward Snappy Fruit Smacks than children exposed to the control commercial (no premium).

H_5: Children exposed to the premium versions of the commercial would more likely choose Snappy Fruit Smacks in a brand choice experiment than children exposed to the control commercial.

H_6: Attitude toward the premium object and brand preference ratings for Snappy Fruit Smacks would be positively correlated.

Data Collection Procedure. The 197 participating school children were exposed to one of the four previously described versions of the Snappy Fruit Smacks commercial. Immediately post-exposure, a paper-and-pencil procedure was employed to assess the respondents' recall of the commercial information to which they had just been exposed. An answer sheet was distributed and a series of questions were read to the children from an accompanying flip chart. Children who had been assigned to the control group were asked a series of fifteen (15) questions concerning the product information contained in the commercial, while those assigned to one of the three experimental groups were asked these same questions and an additional eleven (11) premium-oriented questions.

All questions were phrased as statements about the commercial (e.g., "The man in the commercial said the cereal is shaped like little animals"), and the children were instructed to respond to the statements by simply circling a "Yes," "No," or "Not Sure" on their answer sheets. Deliberate instructions and the use of several warm-up questions oriented the children to this questioning technique. Pre-testing assured that children did in fact comprehend the procedure.

Following the recall tests, measures were taken on each child's attitude toward Snappy Fruit Smacks, attitude toward the NFL premium object (this measure did not apply to the control group), and brand choice preference. A "happy face" scale was used to measure both attitudes toward the product and toward the premium. Five variations of a happy face, ranging from an extreme smiling face (like very much), to an extreme frowning face (dislike very much), were constructed. Subjects were instructed to select, in turn, the face which most accurately described how much they liked the premium object (NFL patch) and the experimental product (Snappy Fruit Smacks). Pre-testing indicated this "happy face" procedure was understood by children and thus an appropriate measure of attitudes.

Brand choice preference was measured by displaying a specially prepared box of Snappy Fruit Smacks alongside the boxes of two well-known and heavily purchased brands of fruit-flavored breakfast cereal (Trix and Apple Jacks) and asking each child to select the brand he would most like to have, second most like, and by elimination, third most like.

RESULTS

Distraction Effect Findings. An overview of the general distraction effect findings is provided in Table 1. Average correct recall of product information based on stage of cognitive development and treatment group is presented. The findings indicate that concrete operational children uniformly exhibited greater recall of product information than preoperational children exposed to the same commercials.

Especially interesting are findings concerning the impact of the relative commercial time devoted to presenting product and premium information. Contrary to expectations, the control group exposed to a commercial containing product information only did *not* exhibit more accurate recall of product information than all three experimental groups. Instead, both preoperational and concrete operational children exposed to the commercial containing 10 seconds of premium information had the highest product information recall accuracy. The preoperational and concrete operational control groups as expected, however, did exhibit somewhat greater product information recall accuracy than the experimental groups exposed to commercials which devoted 15 and 20 seconds to premium information.

The results of the two distraction effect hypotheses are now discussed. A two-way ANOVA (Table 2) was performed for testing both hypotheses. Results are presented separately for each.

H_1: Control Versus Experimental Group's Product Information Recall Accuracy. As revealed in Table 2, product information recall accuracy was significantly affected by the particular commercial version (i.e., treatment group) to which subjects were exposed. However, results of individual comparison tests (Scheffe, 1953) between individual treatment groups were not in the hypothesized direction. The control group, contrary to expectations, did *not* exhibit significantly greater product information recall accuracy than any of the three experimental groups. Instead, statistical significance of the treatment group effect was simply due to the fact that the "10 Prem/20 Prod" experimental group displayed significantly greater recall accuracy than the other two experimental groups. The results of these individual comparison tests prompt us to reject hypothesis one—*the control group did not have significantly greater product information recall accuracy than the experimental groups.*

This finding, therefore, is not supportive of the FTC's general claim that premium advertising distracts a child's ability to process product information. It appears that the extent of product recall is somewhat influenced by the presence of premium information, but not in the manner expected. Relatively long portions of premium presentation did not significantly reduce the child's ability to accurately recall product information compared to the control group. In contrast, the superiority of the 10-second premium version (see Table 1) might suggest that a commercial which presents a relatively small amount of premium information actually hightens the child's overall attention set to both product and premium information. Consequently, instead of being distracted from processing product information, the child may instead be more attentive to it as well as the premium information.

H_2: Preoperational Versus Concrete Operational Product Information Recall Accuracy. The results of the ANOVA test as reported in Table 2 also reveal that stage of cognitive development had a significant effect on product information recall accuracy. In all treatment groups, concrete operationals uniformly exhibited greater recall accuracy than preoperational children. With distraction operationalized as the inverse of product information recall accuracy, this finding would seemingly support hypothesis two and indicate that preoperationals are in fact more distracted than concrete operationals by premium advertising. However, we are reluctant to accept the distraction effect as the only explanation for the findings. An alternative explana-

tion might be that concrete operationals simply possess greater memory facility than preoperationals and thus are capable of greater recall accuracy. It therefore appears that a superior experimental procedure is needed to unequivocally ascertain whether premium advertising has a more distractive effect on preoperationals than concrete operational children.

Necessary Effect Findings. Results of the four necessary effect tests are now discussed.

H_3: Correlation between Premium and Brand Attitudes. This hypothesis was tested by correlating the experimental groups' responses to the happy face measures of attitudes toward the premium object and toward Snappy Fruit Smacks. Separate correlations were performed for boys and girls since it would be expected that girls would be less interested than boys in the football-oriented premium object. The results (Table 3) reveal that though the two attitude measures were positively correlated for both boys and girls, neither measure was statistically significant. The third hypothesis is thus rejected as *it appears that greater liking of a premium object does not necessarily create greater liking of the product containing the premium.* This finding takes on added significance when it is noted that subjects were very favorably disposed to the NFL patch premium object. On the basis of a five-point attitude measure (5- like very much . . . 1- dislike very much), the average rating for the NFL patch was 4.04.

H_4: Control Versus Experimental Groups' Attitudes Toward Snappy Fruit Smacks. The null hypothesis for the fourth research hypothesis was that the experimental groups' mean attitude toward Snappy Fruit Smacks is more favorable than the control group's. A one-tailed t-test provided an appropriate test. As indicated in Table 4, the null hypothesis was not rejected, and the control and experimental groups' mean attitudes were actually reversed from the hypothesized direction. *The control group, exposed to a commercial containing no premium information, displayed a more favorable attitude toward Snappy Fruit Smacks than did the experimental group.*

This finding suggests that the inclusion of a premium object in a commercial does not necessarily enhance attitudes toward the principal product. In fact, the results of this experiment suggest that attitudes toward the principal product may be formed somewhat independently of attitudes toward the premium object. Conclusive evidence is not provided by this research, however, since cross-sectional analysis was used and only a single type of premium object was tested.

H_5: Control Versus Experimental Group's Brand Choice Preference. An additional method of testing the FTC's necessary effect proposition was accomplished by performing a brand choice experiment. Children were requested to indicate their first, second, and third choice preferences for Snappy Fruit Smacks, Apple Jacks, and Trix. The purpose of this experimental procedure was to determine whether the brand choice ratings of Snappy Fruit Smacks varied significantly across the four treatment groups. Further, this quasi-behavioral measure provided a means of evaluating the validity of the attitude measures. It also enabled an evaluation of whether purchase inclination (i.e., brand choice behavior) is significantly correlated with attitudes toward the premium object.

Since the dependent variable (brand choice rating) is a discrete categorical variable, nonparametric tests were indicated. A chi-square test was performed to determine whether brand choice ratings for Snappy Fruit Smacks were independent of treatment (i.e., commercial version to which children were exposed). Results of this analysis (Table 5) reveal that the majority of subjects chose Snappy Fruit Smacks as their least preferred cereal.

Although the data reflect a trend whereby subjects are more prone to prefer Snappy Fruit Smacks as the relative portion of commercial time devoted to presenting the premium increases, the results are not statistically significant. Therefore, the null hypothesis is accepted *that purchase inclination (brand choice ratings) is independent of whether or not a premium is presented in a television commercial.*

H_6: Correlation between Attitudes toward Premium and Brand Preference Ratings. Additional insight into the brand choice data was provided by correlating the respondents' brand choice (i.e., preference) ratings for Snappy Fruit Smacks with their attitude ratings toward it and also toward the premium object. The Spearman rank correlation between attitude toward Snappy Fruit Smacks and preference ratings for it was highly significant (r_s=.397; $p<.01$). Although this does not represent a test of the necessary effect proposition, the moderately high association does provide some support for the validity of the attitude measurement scale used in this research.

The correlation between attitudes toward the premium object and preference ratings for Snappy Fruit Smacks, however, did provide a meaningful test. Under the FTC's necessary effect proposition, it would be expected that the more favorable the attitude toward the premium object, the higher the choice rating for Snappy Fruit Smacks. The Spearman rank correlation tests that were conducted holding sex constant are shown in Table 6. The results reveal relatively small, but statistically significant correlations. This suggests *the more a premium object is liked, the more appealing is the advertised product containing the premium.* Although the evidence is not strongly supportive, it does appear that a premium does exert some influence on children's purchase inclinations.

SUMMARY AND IMPLICATIONS

Distraction Effect. Table 7 provides an overview of this study's findings in relation to the FTC's proposed "distraction effect" of premium advertising. In summary, the distraction effect evidence indicates that accurate recall of product information is significantly influenced both by stage of cognitive development and by the relative length of time in a commercial devoted to presenting product and premium information. Concrete operational children uniformly exhibited greater product information recall accuracy than preoperationals and thus appeared to be less distracted. It is unclear, however, whether these findings are due to a distraction effect or merely reflect greater memory facility on the part of concrete operationals. A superior experimental procedure is required to clarify this issue.

Most significantly, the findings reflect that product information recall accuracy declines nonmonotonically as greater portions of commercial time are devoted to presenting the premium. Although the treatment groups receiving 15 and 20 seconds of premium information exhibited lower recall accuracy than the control group, it does not appear that a commercial devoting relative short periods of time to presenting the premium distracts the child's product recall ability. In fact, the treatment group which was exposed to a commercial containing 10 seconds of premium information exhibited a level of recall accuracy which was greater than the control group which was exposed to a commercial without a premium.

It thus appears that the FTC's distraction effect proposition is not applicable to all premium-oriented commercials. Those which limit the length of premium presentation time are not likely to distract the child from processing product-oriented information.

Necessary Effect. As illustrated in Table 8, the findings of the necessary effect tests are not strongly supportive of the FTC's claim. Four tests were performed, but only one substantiates the Commission's position. On balance, this study's results question the legitimacy of the FTC's claim. It appears that liking of a premium object does not necessarily assure that children will also like or desire the product containing the premium.

Public Policy Implications. The effectiveness of the "10 Prem/20 Prod" commercial on product information recall is noteworthy. No evidence was uncovered that premiums serve to distract the child from retaining important product information when only 10 seconds of a 30 second commercial are devoted to the premium. Consequently, this study suggests that a revision of the current NAB code to more stringent time limitations on premium presentation is more appropriate than a banning of premium advertising.

Also, the FTC's categorization of children's T.V. premium advertising as "unfair" communication within the context of a necessary effect is also questionable considering this study's results. The relationships uncovered between premium attitudes, product attitudes, and brand preferences were generally nonsupportive of the FTC's proposition. Particularly interesting was the tentative evidence that premium and product attitudes may be formed independently by children. The Commission's premium guidelines were constructed without even rudimentary supporting consumer evidence. This initial study casts doubt on the propriety of a complete ban on premiums in children's television advertising.

Limitations of the Study. In order to advance future research on children's premiums, the following inherent limitations of this study must be overcome: (1) the present experiment was cross-sectional, so no inferences can be drawn regarding premium advertising's short- and long-run effects on child information processing; (2) the FTC's "difficulty of choice" claim was not operationalized and tested; (3) the limitations of the sample used in this study stem from the fact that the experimental subjects reside in an affluent, upper socioeconomic area; (4) the major dependent variable in the study was labeled recall, but given the questioning technique employed, perhaps it should more appropriately be termed aided recognition; (5) although data analyses were performed controlling for the sex of the subject, differential *interest* in the football patch premium may have biased the study's findings; and (6) only thirty-second commercial messages were examined with the experimental treatments.

The authors are already in the process of conducting additional research aimed at answering some of the questions suggested by the above limitations. It is hoped that a series of systematic research programs will evolve to examine the premium issue.

TABLE 1.—*Average product information recall accuracy by cognitive level and treatment group*

Treatment group	Preoperationals		Concrete operationals	
	$\bar{x}$	n	$\bar{x}$	n
0 premium per 20 product [1]	[2] 9.50	12	10.97	38
10 premium per 20 product	10.09	11	11.59	39
15 premium per 15 product	8.17	12	10.62	37
20 premium per 10 product	8.70	10	10.00	38
		45		152

[1] To be read: 0 seconds of commercial devoted to premium informatiou/30 seconds devoted to product information other treatment groups to be interprcted in like manner.
[2] Cell entries indicate the mean number of correct responses to the 15 questions concerning product information presented in the commercials.

TABLE 2.—*Analysis of variance summary of product information recall accuracy*

Source of variation	Sum of sqnares	Degrees of freedom	Mean square	F-ratio	Probability
Treatment group	53.37	3	17.79	4.07	0.0079
Cognitive development	97.78	1	97.78	22.35	.0001
Interaction	7.09	3	2.36	.54	.6553
Within cells	826.79	189	4.38		
Total	985.02	196			

TABLE 3.—*Correlation of attitudes toward premium and toward Snappy Fruit Smacks*

Sex	n	r_p [1]	Probability
Boys	71	0.1396	0.123
Girls	76	.0208	.429
	[2] 147		

[1] Pearson product corrclation was used assuming interval scaled attitude measures.
[2] Does not equal full sample size (197) since analysis not applicable to control group.

TABLE 4.—*Average attitudes of control and experimental groups toward Snappy Fruit Smacks* [1]

Treatment	n	Average attitude $\bar{x}$ [2]
Control group	50	3.66
Experimental group [3]	147	3.33

[1] Computed t-value=−1.64; 1-tailed test not significant at 0.05 with 195 degrees of freedom.
[2] Maximum score=5 (like very much).
[3] Responses of all 3 experimental groups collapsed.

TABLE 5.—*Relationship between brand choice ratings for Snappy Fruit Smacks and treatment groups* [1]

Treatment groups	Percent of subjects selecting Snappy Fruit Smacks			
	1st choice	2d choice	3d choice	Total (percent)
0 premium/30 product [2]	6.0	32.0	62.0	100
10 premium/20 product	11.8	11.8	76.4	100
15 premium/15 product	10.4	29.2	60.4	100
20 premium/10 product	10.4	39.6	50.0	100

[1] Chi-square=11.25, 6 d.f., not significant at 0.05 level.
[2] To be read: 0 seconds of commercial devoted to premium information per 30 seconds devoted to product information; other treatment groups to be interpreted in like manner.

TABLE 6.—*Correlation between attitudes toward premium and preference ratings for Snappy Fruit Snacks*

Sex	n	r_s	Probability
Boys	71	0.203	0.045
Girls	76	.199	.042
	[1] 147		

[1] Does not equal full sample size (197) since analysis not applicable to control group.

TABLE 7.—*Summary of the distraction effect tests*

Hypothesis test	Finding	Evaluation
H_1: Control group's product information recall accuracy significantly greater than experimental groups'.	The control group did not exhibit significantly greater product recall accuracy than any of the 3 experimental groups.	Nonsupportive of FTC position.
H_2: Concrete operational's product information recall accuracy significantly greater than preoperational's.	Concrete operationals did exhibit significantly greater recall accuracy.	This test is not a direct evaluation of any FTC claim, and finding subject to alternative explanations.

TABLE 8.—*Summary of the necessary effect tests*

Hypothesis test	Finding	Evaluation
H_3: Attitude toward premium and attitude toward Snappy Fruit Smacks are positively correlated.	Positive correlations, but not statistically significant.	Nonsupportive of FTC position.
H_4: Experimental groups have more favorable attitude toward Snappy Fruit Smacks than control group.	No significant differences between mean attitude ratings.	Nonsupportive of FTC position.
H_5: Experimental groups give Snappy Fruit Smacks higher brand choice ratings than control group.	Brand choice ratings and treatment groups statistically independent.	Nonsupportive of FTC position.
H_6: Attitude toward premium and preference for Snappy Fruit Smacks are positively correlated.	Small, but statistically significant correlations.	Supportive of FTC position.

FOOTNOTES

[1] A previous study conducted by Rubin (1974) touched on the premium issue but was more generally concerned with children's socialization processes.

[2] Subsequent references to the guide will simply refer to the page number.

[3] This vague "necessary effect" was not specifically presented by the FTC as one of the harmful effects, but since the Commission regards it as unfair, it may also be interpreted as a potentially harmful effect.

[4] This interpretation of the Commission's vague reference to "necessary effect" was suggested by Jacoby (1974) and appears as plausible and reasonable as any other interpretation.

[5] Age is merely a surrogate of cognitive development, and the exact age at which one becomes concrete operational depends on the particular child. Research, however, has indicated that age is highly correlated with cognitive development, and children between the ages of 2–7 are typically regarded as preoperational. See, e.g., Ward (1974, pp. 6–7).

[6] Existing NAB standards (NAB Code Authority, 1972) would not accept the 20-second premium version employed in this study. However, in order to ascertain what effect length of premium presentation has on product information recall accuracy, it was necessary to incorporate into the experimental procedure at least three levels of premium length.

[7] This hypothesis was suggested by the cognitive development literature and is not intended as a direct test of the FTC's premium guide since no such claim was made by the FTC.

REFERENCES

"Ad Industry Readies Fight on TV Ban of Premiums" *Advertising Age* (July 8, 1974), 64. (no author)

"Advertising Guidelines for Children's Premium Offers," *National Association of Broadcasters Code Authority Interpretation* (February 1972).

Barcus, F. Earle. *Saturday Children's Television: A Report of TV Programming and Advertising on Boston Commercial Television.* Boston: Action for Children's Television, July 1971.

FEDERAL REGISTER, vol. 39, no. 134 (July 11, 1974), 25505–25510. (no author nor title)

"FTC Seeking Data for TV Premium Compromise", *Advertising Age* (September 16, 1974), 86. (no author)

Green, Norma. "Need Documentation of Kid's Premium Issue Researcher Tells Meet," *Advertising Age* (October 28, 1974), 3.

Jacoby, Written comments to Charles A. Tobin, Secretary, Federal Trade Commission, November 24, 1974.

"Putting the Lid on the Kid Vid," *Sales Management* (July 1, 1974), 39–40. (no author)

Rubin, Donald S. "An Exploratory Investigation of Children's Responses to Commercial Content of Television Advertising: Product Orientation Versus Premium Orientation," unpublished paper, Southern Marketing Association Conference, 1974.

Scheffe, H. "A Method for Judging All Contrasts in the Analysis of Variance," *Biometrika* (vol. 40, 1953), 87–104.

Ward, Scott. "Children and Promotion," Marketing Science Institute working paper, March 1972, Table 2 (no page citation).

Ward, Scott. "Consumer Socialization," *Journal of Consumer Research,* 1 (September 1974), 1–14.

Ward, Scott and Daniel B. Wackman. "Children's Information Processing of Television Advertising," in Peter Clarke, *New Models for Mass Communication Research.* Beverly Hills: Sage Publishing Company, vol. II, 1973.

CHILDREN'S TV PREMIUM OFFER STUDY

ANNOUNCER'S SCRIPT FOR TEST AND CONTROL GROUPS

SCRIPT TO SNAPPY FRUIT SMACKS COMMERCIAL EXPERIMENTAL GROUPS

Hey kids, there's a brand new breakfast cereal coming your way, and you're going to love it. It's Snappy Fruit Smacks, and it comes in three fruity flavors: apple, orange, and cherry. You can pick your favorite flavor or mix all three together for your very own specially-made breakfast. Get a free official NFL team patch in each box of Snappy Fruit Smacks. Sew or iron them on your clothes or paste them on your notebook . . . the Pittsburgh Steelers, The Minnesota Vikings, and the Washington Redskins . . . available only in Snappy Fruit Smacks.

SCRIPT TO SNAPPY FRUIT SMACKS COMMERCIAL CONTROL GROUPS

Hey kids, there's a brand new breakfast cereal coming your way, and you're going to love it. It's Snappy Fruit Smacks, and it comes in three fruity flavors: apple, orange, and cherry. You can pick your favorite flavor or mix all three together for your very own specially-made breakfast.

Your Name _____.
Your Grade _____.
Your Age _____.

QUESTIONS

Example A. A cub scout pack is bigger than a den _____.

Example B. The name of your school is _____.

Example C. The Redskins won the Super Bowl _____.

Example D. Today is Monday _____.

1. The TV commercial you just watched was telling you about a cereal product.

2. The TV commercial you just watched was telling you about a toy car.

3. Three children were shown in the TV commercial you just watched.

4. The name of the cereal in the TV commercial was Fruity Smacks.

5. The man in the commercial said the cereal will make you grow up big and strong.

6. The man in the commercial said you can get a gift of baseball cards in the cereal box.

7. The man in the commercial said the cereal product is new.

8. The man in the commercial said the cereal has a lot of vitamins in it.

9. The man in the commercial said the cereal is shaped like little animals.

10. The man in the commercial said you can get a gift of football team patches in the cereal box.

11. The man in the commercial said all you have to do to get the football team patches is to send one quarter (25¢) with the cereal box top to the company.

12. The man in the commercial said you can sew or iron the football team patches on your clothes.

13. The man in the commercial said you can paste the football team patches on your books or toys.

Interviewer: Read the following before asking questions 14–19. "The man in the commercial said the cereal comes in different flavors. Pick what flavors he said the cereal comes in."

14. The man said the cereal comes in GRAPE flavor.

15. The man said the cereal comes in ORANGE flavor.

16. The man said the cereal comes in CHERRY flavor.

17. The man said the cereal comes in LEMON flavor.

18. The man said the cereal comes in BANANA flavor.

19. The man said the cereal comes in APPLE flavor.

Interviewer: Read the following statement before asking questions 20–25. "The man in the commercial said the football team patches in the cereal box are for different football teams. Pick what teams he said the decal stickers come in."

20. The man said you can get a NEW YORK JETS decal sticker.

21. The man said you can get a MINNESOTA VIKINGS decal sticker.

22. The man said you can get a WASHINGTON REDSKINS decal sticker.

23. The man said you can get a BALTIMORE COLTS decal sticker.

24. The man said you can get a ST. LOUIS CARDINALS decal sticker.

25. The man said you can get a PITTSBURGH STEELERS decal sticker.

26. The man in the commercial said you can mix the different cereal flavors together.

27. The man in the commercial said the football team patches come in different sizes.

Interviewer: Read the following before asking questions 28 and 29. "Now, kids, I'd like to know how much you liked the cereal in the commercial you just saw. On my card (interviewer holds up card) and on your answer sheet (interviewer instructs kids to look at answer sheet) there are five faces: one face has a big smile on it; another has a big frown on it; and the other face is blank.

"If you like the cereal, place a mark beside the face with the smile (interviewer places an "X" beside the smiling face). If you *don't like* the cereal, place a mark beside the face with the frown (again the interviewer places an "X" beside the frowning face); if you are not sure whether you like the cereal, then place a mark beside the blank face (interviewer places an "X" beside the blank face. *Only mark one face.*"

28. I like the cereal in the commercial very much.

I like the cereal in the commercial pretty much.

I'm not sure whether I like the cereal in the commercial.

I don't like the cereal in the commercial much.

I don't like the cereal in the commercial at all.

"Now kids, let's do the same thing for the football team patches in the TV commercial you just saw. I'd like to know how much you would like to have one of these decals. Place a mark beside one of the five faces below—the same way you did in the previous question. The smiling face means you would *like* to have one of the decals. The frowning face means you *would not like* to have one of the decals. The blank face means you *are* not sure whether you would like to have one of the decals.

29. I would like to have a football team patch very much.

I would like to have a football team patch pretty much.

I'm not sure whether I would like to have a football team patch.

I would not like to have a football team patch much.

I would not like to have a football team patch much at all.

Following the above questions, the students are given an opportunity to select the brand of cereal which "you would like your mother to purchase the next time she goes to the store." A display is set up with three cereal boxes, Apple Jacks, Snappy Fruit Smacks, and Trix. Beside each cereal box are the letters (on cards) A, B, and C, respectively. Students are asked to mark the letter corresponding to their "First Choice Cereal" in the space on their answer sheet. They are then asked to write in their second and third choices.

Interviewer and assistants collect answer sheets and thank the students. Students are debriefed immediately about the study.

PREMIUM OFFER STUDY

Experimental Procedure. Instructions for paper and pencil instrument. (Control Group)

Identical instructions and procedures were employed for the control group subjects. The control group, however, was not asked the premium recall questions nor was the "happy-sad face" scale for the football team patch administered. The questions included for the control version are listed below: Questions 1–9, 14–19, 26, 28 and 30. Other than these omissions, the questions were asked in the same order for the control group.

II. PROPOSED STANDARDS FOR ADVERTISING PREMIUMS ON CHILDREN'S TELEVISION, BY THE CRACKER JACK DIVISION OF BORDEN FOODS, BORDEN, INC.

Children are a unique television audience. In their formative years children are more easily influenced than adults. Their limited experience has not fully prepared children to make comparative judgments.

Advertising to children should be presented with great care. Premium advertising requires special consideration so that children are not misled. Premium advertising must not direct children to a strong desire for the premium without consideration of the merits of the product or service being advertised.

Overemphasis or distortion of a premium offer can be unfair and deceptive to a child.

The Federal Trade Commission is issuing these guidelines so that advertisers know the commission's view of what constitutes fair premium advertising to children on television.

PROPOSED STANDARDS FOR ADVERTISING PREMIUMS ON CHILDREN'S TELEVISION

Premiums may be advertised on children's televison *only* when:

1. The *advertisement* does not attempt to pressure the child to desire or purchase a product or service primarily because of a premium offer.

2. The *advertisement* does not mislead, distort, or enlarge the value of the premium, by description or visual representation.

3. The *advertisement* containing the premium offer is primarily devoted to the merits of the product or service being advertised; OR

The *premium* being advertised is related to the merits of the product or service being advertised; OR

The *premium* being advertised is of a public service nature.

4. The *premium* is not conditioned on the purchase of the advertised product or service, or, in the case of in-pack premiums, is also available separately.

DEFINITIONS

Children's television includes any television program in which the majority of the audience may reasonably be expected to be composed of children under twelve years of age.

Premiums includes prizes, toys, games, and other such premium incentives, including contests, sweepstakes and club memberships, having appeal to children. An advertisement referring to a game printed on the back panel of a box, or to toys which could be constructed from cut-out pieces of the box, is also included. This regulation applies when the consumer does not receive the premium itself with his purchase, but merely a box top or order blank which entitles him to send for the premium.

Primarily devoted means that the premium offer shall not constitute more than one-third of the total time of the commercial, or 10 seconds, whichever is less. In addition, no premium offer shall, either directly or indirectly, by visual means, placement or otherwise, constitute the dominant promotional appeal of the advertisement.

Merits of the product or service includes such factors as price, service, quality, utility or function, and, in the case of service establishments, ambiance.

Public service nature includes causes which are in the public interest, such as health research, good nutrition, ecology, dental hygiene, education, and safety.

Not conditioned on a purchase means that there is no requirement to purchase the product or service advertised in order to obtain the premium. *In-pack premium* means a premium that is included with the product. *Available separately* means the consumer may obtain the premium *without* purchase of the advertised product when it is offered on children's television.

III. COMMENTS

Written comments on the foregoing two items may be sent to the Secretary, Federal Trade Commission, Pennsylvania Avenue and Sixth Streets, NW., Washington, D.C. 20580. All comments will be entered on the public record at the above address and will be available for inspection in Room 130 at the above-mentioned address during normal business hours. Copies of the proposed Guide and staff statement may be obtained by mail from the Division of Special Projects, Bureau of Consumer Protection, at the above-mentioned address. Comments may be submitted no later than August 7, 1975.

Issued: July 8, 1975.

By direction of the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.75-17356 Filed 7-3-75;8:45 am]

GENERAL SERVICES ADMINISTRATION

[34 CFR Ch. II]

FINANCIAL MANAGEMENT

Coordinated Determination of Indirect Costs Applicable to Federal Grants and Contracts

Notice is hereby given that General Services Administration is considering promulgating a Federal Management Circular (FMC) prescribing policies and procedures for coordinated determinations of indirect costs applicable to Federal grants and contracts. The proposed FMC is intended to bring about the executive branch implementation of Commission on Government Procurement Recommendation A–29. This recommendation concerns avoidance of duplicative administrative efforts involving indirect costs associated with cost-type as well as certain other types of contracts. An interagency task group has proposed that the circular be made applicable to grants as well as contracts.

GSA solicits written comments on the proposed FMC. To be given consideration, the comments should be submitted by August 15, 1975, to General Services Administration, Office of Federal Management Policy (AMC), Washington, D.C. 20405.

The proposed FMC reads as follows:

[FMC: 74———: Coordinated determination of indirect costs applicable to Federal grants and contracts]

1. *Purpose.* This circular provides policies and procedures for coordinated determinations of indirect costs applicable to all Federal contracts and grants at a given contractor location.

2. *Effect on other Federal Circulars.* Federal Management Circulars 73–6 and 74–4 set forth policies and procedures for coordinated indirect cost determinations applicable to educational institutions and state and local governments respectively. The provisions of these circulars govern with respect to educational institutions and state and local governments except where the provisions of this circular pertain to an aspect not addressed by or otherwise not in conflict with the appropriate circular.

3. *Policy intent.* The objectives are to promote efficiency and economy, by avoidance of overlap and duplication, through a coordinated Federal approach to determinations of indirect costs applicable to both contracts and grants at a given contractor location.

4. *Definitions.* a. *Contract/contractor.* Reference to "contract" and "contractor" also connotes "grant" and "grantee."

b. *Contractor location.* A unit of an activity into which an operating organization is divided for purposes of cost assignment and allocation.

c. *Cognizant agency.* The department/agency responsible for determinations of indirect costs at the contractor location.

d. *Determinations.* Determinations by the cognizant agency, arrived at either by negotiations with the contractor or by audit determination, concerning indirect costs applicable to affected Federal contracts.

5. *Applicability and scope.* This circular applies to all Federal agencies that award or administer contracts. It applies to all contracts which require determinations of indirect costs on an interim basis and for consideration in final settlements of total costs.

6. *Policy.* a. *Determinations of indirect costs.* A single Federal agency will be responsible for determinations of indirect costs for all Federal contracts at a given contractor location. Such determinations shall be timely and shall be carried out in accordance with relevant provisions of law; contract terms, including applicable cost principles and cost accounting standards, rules and regulations; and other applicable regulations or requirements.

b. *Coordination by cognizant agency.* The cognizant agency will notify and coordinate the indirect-cost determination proceedings with these agencies having contracts that would be affected by such determinations.

Such coordination may include providing such agencies with copies of contractor overhead proposals, advisory audit reports, prenegotiation objectives, or in the case of settlements by audit determinations, preliminary audit findings in advance of discussions with the contractor. The coordination shall provide for participation by affected agencies in the negotiation proceedings or discussions.

A noncognizant agency should take the initiative in advising the cognizant agency of its desire to participate in overhead determinations.

c. *Acceptance of indirect cost determinations.* The cognizant agency is responsible for arriving at indirect cost determinations acceptable to all affected agencies. In turn, affected agencies will honor such determinations to the extent allowed or allowable under its contracts.

7. *Administering the policy.* a. *Cognizant agency assignments.* The following agencies are appointed executive agents for designating or arranging for the designation of cognizant agency assignments for entities falling within the different types of organizations set forth below:

Type of Organizations	*Executive agent*
Commercial organizations except Government-owned contractor-operated (GOCO) facilities.	Department of Defense (responsible office).
Educational institutions—see Federal Management Circular 73–6 for cognizant agency assignments.	General Services Administration, Office of Federal Management Policy (AMF), Washington, D.C. 20405, telephone 202–343–7747.
State and local governments and hospitals.	Department of Health, Education, and Welfare (see Federal Management Circular 74–4) (responsible office).
Other nonprofit and not-for-profit institutions.	National Science Foundation (responsible office).
Contractors performing at Government-owned contractor-operated (GOCO) facilities.	Agency responsible for the specific Government-owned facility.

The executive agent shall be responsible for coordinating proposed agency cognizant assignments with affected agencies. If an interagency impasse is reached, the matter shall be referred to the Office of Federal Management Policy (AMC), General Services Administration, for resolution.

Procuring activities are responsible for determining if a cognizant agency has been designated at a contractor location where indirect cost determinations are required. If a cognizant agency has not been appointed, the procuring activity should make appropriate arrangements through the executive agent for the type of organization involved.

b. *Guidelines for cognizance assignments.* (1) Indirect cost determination assignments shall conform to existing assignments except where duplication of agencies exist (i.e. where more than one agency may have plant cognizance).

(2) In making an assignment where duplication exists or in making changes to assignments, consideration will be given to:

(a) Dollar value of contracts requiring settlement of indirect costs at a given contractor location, and

(b) Availability of qualified staff at or near physical location of contractor.

c. *Procedures for coordinated determinations.* (1) The procedure for indirect cost determinations shall be determined by the cognizant agency at each contractor location. Procedures which may be used are:

(a) Negotiated determinations or

(b) Audit determinations.

(2) The cognizant agency shall notify the contractor of the assignment and shall furnish the name and address of the agency representatives to whom copies of indirect cost proposals shall be sent.

Representatives of other agencies desiring copies of indirect cost proposals will request same through the cognizant agency. The cognizant agency shall also distribute copies of audit reports covering indirect cost proposals, when performed, to each agency to whom copies of the proposals have been sent.

(3) *Negotiated determinations.* The cognizant agency shall notify all other agencies having covered contracts at a given contractor location of pending negotiations. The notified agency shall advise the cognizant agency if it desires to participate in the negotiation. The cognizant agency shall arrange for audits of the contractor's indirect cost proposal(s) and, upon request, the audit agency will provide advice and counsel relating to its audit.

(4) *Audit determinations.* The cognizant audit agency shall notify all agencies having covered contracts at a given contractor location of its pending audit determinations. The notified agencies shall advise the cognizant audit agency if it desires to participate in such determinations. (This procedure recognizes that audit determinations, like negotiated determinations, may involve discussions and negotiations with contractors concerning allocability or allowability of some elements of indirect costs.) Subsequent to the audit determination, the cognizant audit agency shall advise all agencies having contracts affected by its determinations. Such determinations are binding unless the contractor appeals to the Contracting Officer of the cognizant agency. In the event of an appeal, the cognizant Contracting Officer shall notify all other agencies having covered contracts of the pending appeal and forward a copy of the audit exception and contractor's appeal. Such agencies may furnish advice to the Contracting Officer for his consideration and possible use in arriving at a decision. If the Contracting Officer sustains the audit determination, the provisions of g. below will be followed.

(5) *Provisional billing and forward pricing rates.* The cognizant agency shall establish provisional indirect cost billing rates and forward pricing indirect cost rates as approprate for consideration/use by procuring office.

d. *Special considerations affecting indirect cost determinations.* An agency which has reason to believe that its contracts necessitate special consideration shall notify the cognizant agency prior to the time of the indirect cost determinations.

e. *Quick closeout procedures.* When indirect costs allocated to a contract are relatively insignificant and agreement can be reached on a reasonable estimate of allocable dollars, the contracting agency can take action to close out a physically completed contract in advance of the indirect cost determination. Such action shall be considered final for the affected contracts. No adjustment shall be made against other government contracts for any over or under recovery disclosed at the time of indirect cost determinations by the cognizant agency. The cognizant agency shall be notified of such settlements.

f. *Formalizing indirect cost determinations.* The cognizant agency is responsible for preparing and distributing copies of its indirect cost determinations to all affected agencies as appropriate.

g. *Disputes.* Appeals involving indirect cost determinations will be processed in accordance with the procedures of the cognizant agency which, in turn, will notify other agencies having a vested interest in the outcome of the dispute. The cognizant agency shall act on behalf of all other agencies having contracts affected by the dispute. Pending final resolution of the dispute, no other

agency will make a separate settlement with the contractor, except in extraordinary circumstances, and only then with the concurrence of the agency processing the dispute. However, this prohibition is not intended to preclude use of the quick closeout procedures pending final resolution of the dispute.

h. *Reimbursement.* Reimbursement to cognizant agencies for work performed under this circular will be made by reimbursement billing under section 601, Economy Act of 1932, 31 U.S.C. 686.

8. *Inquiries.* Further information concerning this circular may be obtained by contacting:

General Services Administration (AMC)
Washington, DC 20405
Telephone: IDS 183–7794
FTS 203–343–7794

Dated at Washington, D.C. on June 26, 1975.

WILLIAM W. THYBONY,
Acting Associate Administrator for Federal Management Policy.

[FR Doc. 75–17441 Filed 7–3–75;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-5/65]

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Notice of Meeting

The United States Advisory Commission on International Educational and Cultural Affairs will meet in open session on Wednesday, July 23, 1975 at the U.S. Mission to the United Nations, 799 U.N. Plaza, New York, N.Y. 10017. The meeting will begin at 10:00 a.m. and continue until all items on the agenda have been covered.

The agenda will include:

1. Approval of the Minutes of the 76th Meeting of the Commission held on June 26, 1975.
2. A discussion of the U.S. role in the United Nations University.
3. Any other business which any member of the Commission or its staff may bring to the attention of the group.

Members of the general public may attend and participate in the discussion subject to instructions of the Chairman.

For purposes of fulfilling building security requirements, anyone wishing to attend the open session must advise the Staff Director by telephone in advance of the meeting. Telephone (202) 632-2764. Members of the public will be accommodated up to the seating capacity of the meeting room.

W. E. WELD, Jr.,
Staff Director,
Commission Secretariat.

JULY 3, 1975.

[FR Doc.75-17760 Filed 7-3-75;12:34 pm]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 75-5]

COASTAL PHARMACEUTICALS, INC. NORFOLK, VIRGINIA

Notice of Hearing

Notice is hereby given that on March 21, 1975, the Drug Enforcement Administration, Department of Justice, issued to Coastal Pharmaceuticals, Inc., Norfolk, Virginia, Orders to Show Cause as to why the Drug Enforcement Administration should not deny the applications for registration executed July 3, 1974 for renewal of Drug Enforcement Administration registation #PC0063646 and DEA registration #PC0003993 under section 303 of the Controlled Substances Act of 1970 (21 U.S.C. 823).

Thirty days having elapsed since said orders were received by the Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, Notice is hereby given that a hearing in this matter will be held commencing at 10 a.m., July 30, 1975, in Room 1210, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, D.C.

Dated: June 27, 1975.

HENRY S. DOGIN,
Acting Administrator,
Drug Enforcement Administration.

[FR Doc.75-17468 Filed 7-3-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

[INT DES 75-35]

OIL AND GAS DEVELOPMENT, SANTA BARBARA CHANNEL OUTER CONTINENTAL SHELF, OFFSHORE CALIFORNIA

Change of Dates of Public Hearing and Extension of Comment Period on Draft EIS

The public hearing on the subject draft environmental statement, originally scheduled for July 14, 15, and 16, 1975, at the Lobero Theater, 33 East Canon Perdido, Santa Barbara, California, as published in the FEDERAL REGISTER on June 13, 1975 (40 FR 115), has been rescheduled for August 25 and 26, 1975 (and on August 27 if necessary), at the same address. The time of the hearing will be 9 a.m. to 12 noon, and 1:30 to 5 p.m., and 6:30 to 9 p.m. on August 25 and 26, with a morning session only on August 27 if necessary.

The comment period on the draft impact statement has been extended from July 31, 1975, to September 1, 1975. The cutoff date for submission of a request to present oral testimony at the hearing has been changed to August 1, 1975, rather than July 1, as originally indicated.

Dated: June 30, 1975.

V. E. MCKELVEY,
Director, U.S. Geological Survey.

[FR Doc.75-17501 Filed 7-3-75;8:45 am]

Office of Hearings and Appeals

[Docket No. M 75-122]

MOUNTAINEER COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Mountaineer Coal Company has filed a petition to modify the application of 30 CFR 75.1105 to its Williams Mine, Marion County, West Virginia.

30 CFR 75.1105 in pertinent part provides:

> * * * Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return. * * *

In support of its petition, Petitioner states:

1. The subject pumps are located on old haulage ways from the pit mouth to the Main South return. The haulage ways were mined approximately 30 years ago, and the pump stations are located in natural swags. Continuous operation is necessary to prevent folding of the haulage.
2. The haulage way is ventilated with intake air, and there are no return airways in the immediate vicinity. The nearest return to the pump is more than 2,000 feet away. Intake air that passes over these pump stations is not used to ventilate an active working section.
3. In lieu of the provision to course the air current which is used to ventilate the structure or area directly into the return, it is proposed that a fire protection system be installed as hereinafter described and that such system will at all times provide no less than the same degree of safety as intended by the Departmental regulations.

To provide no less than the same measure of protection afforded by the mandatory standard, Petitioner proposes to install the following outlined system:

A. The pumps will be housed in a fireproof building.

B. An automatic fire suppression device will be installed in each of the pump stations that will be activated by heat sensors over the pump.

C. Automatic closing steel doors, activated by a heat sensory device, will be installed.

D. No oil or combustible material will be stored in the pump stations.

E. Electrical circuits will comply with the requirements of the Departmental regulations.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 6, 1975. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

JUNE 26, 1975.

[FR Doc.75-17492 Filed 7-3-75;8:45 am]

[Docket No. M 75-104]

P AND H EQUIPMENT COMPANY, INC.

Petition for Modification of Application of Mandatory Safety Standard; Correction

In FR Doc. 75-12684, appearing at page 20967 in the issue of Wednesday, May 14, 1975, the heading should read as set forth above.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

JUNE 27, 1975.

[FR Doc.75-17493 Filed 7-3-75;8:45 am]

[Docket No. M 75-121]

SOUTHERN OHIO COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Southern Ohio Coal Company has filed a petition to modify the application of 30 CFR 75.1403-9(a) and (d)(2) to its Meigs Mine No. 1, Raccoon Mine No. 3 and Meigs Mine No. 2 located at Athens, Ohio.

30 CFR 75.1403-9(a) provides:

Shelter holes should be provided on track haulage roads at intervals of not more than 105 feet unless otherwise approved by the Coal Mine Safety District Manager(s).

30 CFR 75.1403 in pertinent part provides:

Shelter holes should be provided at all manually operated doors and at switch throws except * * * at switches where more than 6 feet of side clearance is provided. The Coal Mine Safety District Manager(s) may permit exemption of this requirement if such shelter holes create a hazardous roof condition.

In support of its petition to secure a waiver of §§ 75.1403-9(a) and 75.1403-9(d), Petitioner states:

1. The majority of track switches in the subject mine are located in the supply yard near the shaft bottom area. Petitioner would prefer not to disturb the pillars in this area.

2. Where shelter holes are cut in the pillars, the ribs have a tendency to roll causing the shelter holes to become wider than the 4 foot maximum prescribed by § 75.1403-9(b) of the Departmental regulations.

3. Petitioner's alternate method will at all times guarantee to the miners no less than the same measure of protection afforded by the mandatory safety standard.

Persons interested in this petition may request a hearing on the petition or furnish comments on or before August 6, 1975. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

JUNE 26, 1975.

[FR Doc.75-17494 Filed 7-3-75;8:45 am]

Office of the Secretary

[INT FES 75-55]

HAWAII VOLCANOES NATIONAL PARK

Availability of Final Environmental Statement of Proposed Wilderness Areas

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a final environmental statement for Proposed Wilderness Areas, Hawaii Volcanoes National Park, Hawaii.

The final environmental statement considers the designation of 123,100 acres of Hawaii Volcanoes National Park as wilderness, and proposes 7,850 acres as potential wilderness addition.

Copies are available from or for inspection at the following locations:

Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102.
Hawaii State Office, Pacific International Buildings, 677 Ala Moana Boulevard, Suite 512, Honolulu, Hawaii 96813.
Hawaii Volcanoes National Park, Hawaii 96718.

Dated: June 12, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75-17342 Filed 7-3-75;8:45 am]

COORDINATED LONG-RANGE OPERATION OF COLORADO RIVER RESERVOIRS

Notice of Formal Review of Criteria

The criteria for coordinated long-range operation of the reservoirs of the Colorado River, promulgated pursuant to Pub. L. 90-537 and published in the FEDERAL REGISTER, June 10, 1970, provided that the Secretary of the Interior sponsor a formal review of the criteria at least every 5 years, with participation by State representatives as each Governor may designate and other such parties and agencies as the Secretary may deem appropriate. A copy of those criteria accompanies this notice.

By letter dated June 9, 1975, the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming were requested to comment on any part of the criteria requiring review. The Governors were further requested to designate one representative and such other participants from their States, as appropriate, to take part in the formal review. Similar invitations have been issued to other interested Federal agencies, including the Department of the Army, Environmental Protection Agency, Council on Environmental Quality, United States Section of the International Boundary and Water Commission, and various offices of the Department of the Interior.

Interested persons or agencies not represented by the invited States and Federal participants are hereby invited to submit written comments on any part of the criteria requiring review. Comments will be accepted by July 31, 1975, and should be directed to Mr. Gilbert G. Stamm, Commissioner, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240.

Dated: July 1, 1975.

JACK O. HORTON,
Secretary of the Interior.

COLORADO RIVER RESERVOIRS

COORDINATED LONG-RANGE OPERATION

Criteria for coordinated long-range operation of Colorado River Reservoirs pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. 90-537).

These Operating Criteria are promulgated in compliance with section 602 of Public Law 90-537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Project Act (hereinafter "Upper Basin Storage Reservoirs") and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the "Secretary") may modify the Operating Criteria from time to time in accordance with section 602(b) of Public Law 90-537. The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. *Annual Report*

(1) On January 1, 1972, and on January 1 of each year thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States shall be advised of any changes by June of each year.

II. *Operation of Upper Basin Reservoirs*

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of that year to be in storage as required by section 602(a) of Public Law 90-537 (hereinafter "602(a) Storage"). The quantity of 602(a) Storage shall be determined by the Secretary after consideration

of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

(b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions in the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The "Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River," dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basin consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under section 602(a) (1) and (2) of Public Law 90–537.

(2) If, in the plan of operation, either:

(a) The Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Articie II(1) hereof, for that date; or

(b) The Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date;

the objective shali be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75 million acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.

(3) If, in the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602 (a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) To the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead.

(b) To maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) To avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the availabie capability of the powerplant. Any water thus retained in Lake Poweli to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. *Operation of Lake Mead*

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obiigations;

(b) Reasonable consumptive use requirements of mainstream users in the lower basin;

(c) Net river losses;

(d) Net reservoir losses;

(e) Regulatory wastes.

(2) Untii such time as mainstream water is delivered by means of the Centrai Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria wiil be met.

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the foliowing extent:

(a) *Normal.* The annuai pumping and release from Lake Mead will be sufficient to satisfy 7,500,000 acre-feet of annual consumptive use in accordance with the decree in Arizona v. California, 376 U.S. 340 (1964).

(b) *Surplus.* The Secretary shall determine from time to time when water in quantities greater than "Normai" is available for either pumping or release from Lake Mead pursuant to Article II(B)(2) of the decree in Arizona v. California after consideration of all relevant factors, including, but not limited to, the following:

(i) The requirements stated in Article III (1) of these Operating Criteria;

(ii) Requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in Arizona v. California;

(iii) Actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and

(iv) Estimated net inflow to Lake Mead.

(c) *Shortage.* The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to the foilowing:

(i) The requirements stated in Articie III (1) of these Operating Criteria;

(ii) Actual and forecast quantities of active storage in Lake Mead;

(iii) Estimate of net inflow to Lake Mead for the current year;

(iv) Historic streamflows, including the most critical period of record;

(v) Priorities set forth in Article II(a) of the decree in Arizona v. California; and

(vi) The purposes stated in Article I(1) of these Operating Criteria.

The shortage provisions of Article II(B) (3) of the decree in Arizona v. California shali thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required by section 301 (b) of Public Law 90–537.

IV. *Definitions*

(1) In addition to the definitions in section 606 of Public Law 90–537, the foliowing shali also apply:

(a) "Spills," as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utiiized for Project purposes, including, but not limited to, the generation of power and energy.

(b) "Surpius," as used in Article III(3)(b) herein, is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term "surplus" as used in these Operating Criteria is not to be construed as applied to, being interpretive of, or in any manner having reference to the term "surplus" in the Colorado River Compact.

(c) "Net inflow to Lake Mead," as used in Article III(3)(b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of iosses from Lake Mead.

(d) "Available capability," as used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physicaliy available for generation.

WALTER J. HICKEL,
Secretary of the Interior.

JUNE 4, 1970.

NOTES

This Document was filed June 9, 1970 as FR Doc. 70–7138 and published in Vol. 35, No. 112, FEDERAL REGISTER, Wednesday, June 10, 1970.

[FR Doc.75–17541 Filed 7–3–75;8:45 am]

[INT FES 75–60]

PROPOSED HAVASU WILDERNESS AREA

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, the Department of the Interior has prepared a final environmental statement for the Proposed Havasu Wilderness Area, San Bernardino County, California.

The proposal recommends that 2,510 acres of the 41,495-acre Havasu National Wildlife Refuge be designated as a unit of the National Wilderness Preservation System. The proposed wilderness lies within San Bernardino County, California.

Copies of the final statement are available for inspection at the following locations:

Regional Director
U.S. Fish and Wildlife Service
500 Gold Avenue, SW
Albuquerque, New Mexico 87102

Refuge Manager
Havasu National Wildlife Refuge
Box A
Needies, California 92363

U.S. Fish and Wildiife Service
Branch of Environmental Coordination
Room 2252
18th & C Streets, NW
Washington, D.C. 20240

Single copies may be obtained by writing the Chief, Branch of Environmental Coordination, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Dated: June 30, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.75–17495 Filed 7–3–75;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

DESCHUTES NATIONAL FOREST ADVISORY COMMITTEE

Notice of Meeting

The Deschutes National Forest Advisory Committee will meet at 8:30 am, August 7, 1975, at the Forest headquarters, 211 NE Revere, Bend, Oregon for a field trip.

The purpose of this meeting will be to review the progress, problems, and direction in wildlife management in the vicinity of Crane Prairie Osprey Management Area.

The Committee members will be asked for advice and counsel regarding the direction and suggested changes.

The meeting will be open to the public. Persons who wish to accompany the Committee should notify the Forest Supervisor's Office at 211 NE Revere, Bend, Oregon 97701, or call (503) 382-6922, extension 301. It will be necessary for the general public to provide their own transportation, lunch and other amenities at no cost to the Government. Written statements may be filed with the Committee before or after the meeting since time will not permit oral comments, from the public, during the course of the trip.

Dated: June 26, 1975.

EARL E. NICHOLS,
Forest Supervisor.

[FR Doc.75-17489 Filed 7-3-75;8:45 am]

ROCK CREEK ADVISORY COMMITTEE

Notice of Meeting

The Rock Creek Advisory Committee will replace their usual meeting with a field trip of the Rock Creek area Saturday, July 26th and possibly Sunday, July 27th, depending on the itinerary to be developed by the Forest Service. The meeting place will be in Philipsburg at the Forest Service Ranger Station at 9 a.m.

The purpose of this field trip is to familiarize Committee members with an on-the-ground picture of the Rock Creek area to aid in the evaluation of the options presented for land use.

The tour is open to the public, but reservations must be made with the Philipsburg District Ranger by July 15th in order to coordinate transportation. Those people participating in the tour will be required to furnish their own food and bedroll, in the case of overnight extension of the tour.

ROBERT W. DAMON,
Forest Supervisor,
Deerlodge National Forest.

[FR Doc.75-17440 Filed 7-3-75;8:45 am]

Rural Electrification Administration

CAJUN ELECTRIC POWER COOPERATIVE, INC., NEW ROADS, LA.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a proposed loan application for Cajun Electric Power Cooperative, Inc., P.O. Box 578, New Roads, Louisiana 70760. This proposed loan application, together with funds from other sources, will provide for the construction of two 540 MW coal-fired generating units and related facilities to be located on the Mississippi River in Pointe Coupee Parish, approximately four miles northeast of New Roads, Louisiana.

Additional information may be secured by request submitted to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality Guidelines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, SW, Washington, D.C., Room 4310, or at the borrower's address indicated above.

Comments concerning the environmental impact of the construction proposed should be addressed to the Assistant Administrator-Electric at the address given above. Comments must be received on or before September 5, 1975 to be considered in connection with the proposed action.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 27 day of June, 1975.

DAVID H. ASKEGAARD,
Acting Administrator,
Rural Electrification Administraton.

[FR Doc.75-17460 Filed 7-3-75;8:45 am]

Soil Conservation Service

SENECA CREEK WATERSHED; MD.

Notice of Authorization for Watershed Planning

This provides notice of authorization dated June 30, 1975, to the concerned state conservationist of the Soil Conservation Service to provide planning assistance to specified local organizations for the indicated watershed. The state conservationist may now proceed with investigations and surveys as necessary to develop a watershed plan under authority of the Watershed Protection and Flood Prevention Act (Pub. L. 83-566), as amended. Environmental assessments will be made in accordance with the requirements of the National Environmental Policy Act (Pub. L. 91-190), concurrently with the preparation of the watershed plan.

Persons interested in this project may contact the local organizations or the state conservationist as indicated below:

Maryland: *Seneca Creek Watershed;* 82,479 acres; Montgomery County.

Sponsors—Maryland National Capital Park and Planning Commission, Montgomery County Council, and Montgomery Soil Conservation District.

State Conservationist—Mr. Graham T. Munkittrick, Soil Conservation Service, Hartwick Building, Room 522, 4321 Hartwick Road, College Park, Maryland 20740.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

Dated: June 30, 1975.

VICTOR H. BARRY, JR.,
Acting Administrator,
Soil Conservation Service.

[FR Doc.75-17490 Filed 7-3-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

GREEN BALL BEARING CO.

Petition for a Determination

A petition by Green Ball Bearing Company, Cleveland, Ohio, was accepted for filing on June 30, 1975, under section 251 of the Trade Act of 1974 and in conformity with *Adjustment Assistance Certification Regulations for Firms,* 15 CFR, Part 350, 40 FR 14291 (April 3, 1975) (the "Regulations"). Consequently, the United States Department of Commerce has instituted an investigation to determine whether increased imports into the United States contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm. The petitioner asserts that imported articles classified in §§ 680.3506, 680.3507, 680.3508, 680.3509, 680.3510, 680.3512, 680.3513, 680.3514, 680.3516, 680.3517 and 680.3522 of the Tariff Schedules of the United States ("TSUS") are like or directly competitive with radial ball bearings produced by the firm in the size range from 9 to 100 millimeters outside diameter.

Any party having a substantial interest in the subject matter in the proceedings (as described in § 350.40(b) of the Regulations) may request a public hearing on the matter. A request for a hearing conforming to § 350.40 of the Regulations must be received by the Director, Office of Trade Adjustment Assistance, Room 3011, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230, on or before July 17, 1975.

(Catalog of Federal Domestic Assistance Program No. 11.106, Trade Adjustment Assistance.)

HAROLD A. BRATT, JR.,
Acting Director, Office of
Trade Adjustment Assistance.

[FR Doc.75-17472 Filed 7-3-75;8:45 am]

Maritime Administration

[Docket No. S–453]

LYKES BROS. STEAMSHIP CO., INC.

Application

Notice is hereby given that Lykes Bros. Steamship Co., Inc. in its application dated December 2, 1974 for a new long-term operating-differential subsidy agreement has requested authority to continue its domestic services. Lykes Bros. has a section 805(a) written permission with respect to ships operating in its subsidized Line D Service on Trade Route No. 22 (U.S. Gulf ports/Far East) to provide service between Hawaii and United States Gulf ports in the domestic commerce of the United States on up to the maximum number of sailings authorized for the Line D Service. A new written permission will be required under section 805(a) of the Merchant Marine Act, 1936, as amended, to continue this service if Lykes Bros.' application for a new subsidy agreement is approved.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on July 23, 1975, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: July 1, 1975.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.75–17543 Filed 7–3–75;8:45 am]

National Oceanic and Atmospheric Administration

MARINE MAMMAL PROTECTION ACT OF 1972

Report on Administration

In accordance with the provisions of section 103(f) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Secretary of Commerce submitted a report to the Congress on June 27, 1975, on the administration of the Act with regard to those marine mammals which are the responsibility of the Department of Commerce. This report covers the period May 1, 1974, to March 31, 1975.

The National Marine Fisheries Service plans to provide this report to the public in the near future, through publication in the FEDERAL REGISTER. Copies of the report are now available for review by the public in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Dated: June 27, 1975.

HARRY L. RIETZE,
Acting Associate Director for Resource Management.

[FR Doc.75–17538 Filed 7–3–75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 75F–0096; 75–433]

C. P. HALL CO.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3075) has been filed by C. P. Hall Co., 7300 S. Central Ave., Chicago, IL 60638, proposing that § 121.1099 *Defoaming agents* (21 CFR 121.1099) be amended to provide for the safe use of polyethylene glycol (400) dioleate as a component of defoaming agents used in processing beet sugar and yeast.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: June 26, 1975.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.75–17455 Filed 7–3–75;8:45 am]

[Docket No. 75F–0041; 75–398]

GENERAL MILLS CHEMICALS, INC.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 5B3100) has been filed by General Mills Chemicals, Inc., 2010 East Hennepin, Minneapolis, MN 55413, proposing that § 121.2526 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 121.2526) be amended in the listing in paragraph (a)(5), under the item guar gum modified with 2,3-epoxypropyltrimethylammonium chloride, to provide for the safe use of this additive at a level not to exceed 0.30 percent by weight on the basis of dry paper and paperboard fibers. The additive is currently regulated for use at a level of 0.15 percent by weight on the basis of dry fibers in paper and paperboard that is intended to contact food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B–42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: June 26, 1975.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.75–17454 Filed 7–3–75;8:45 am]

ENDOCRINOLOGY AND METABOLISM ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), the Food and Drug Administration announces the following public advisory committee meeting and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act:

Committee name	Date, time, place	Type of meeting and contact person
Endocrinology and Metabolism Advisory Committee.	July 29, 9 a.m., Conference Room F, Parklawn Bldg., 5600 Fishers La., Rockville, Md.	Open—A. T. Gregoire, Ph.D., (HFD–130), 5600 Fishers La., Rockville, Md. 20852, (301) 443–3510.

Purpose. Reviews and evaluates available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the treatment of endocrine and metabolic disorders.

Agenda. Discussion of PAS–C (NDA 13–473) for its use as an antilipidemic drug and TRH (NDA 17–638) for the diagnosis of pituitary and thyroid function.

Agenda items are subject to change as priorities dictate.

Dated: JUNE 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17451 Filed 7-3-75;8:45 am]

[75-444]

PANEL ON REVIEW OF ANTIPERSPIRANT DRUG PRODUCTS

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Antiperspirant Drug Products by the Secretary, Department of Health, Education, and Welfare, for an additional period of two years beyond July 16, 1975.

Authority for this committee will expire on July 16, 1977, unless the Secretary formally determines that continuance is in the public interest.

Dated: June 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17450 Filed 7-3-75;8:45 am]

PANEL ON REVIEW OF COUGH, COLD, ALLERGY, BRONCHODILATOR AND ANTIASTHMATIC DRUG PRODUCTS

Notice of Room Change

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration, in a notice published in the FEDERAL REGISTER of June 19, 1975 (40 FR 25840 announced public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act.

Notice is hereby given that the Panel on Review of Cough, Cold, Allergy, Bronchodilator and Antiasthmatic Drug Products meeting scheduled for July 17 and 18, 1975, will be held in Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, at 9 a.m.

Dated: June 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17448 Filed 7-3-75;8:45 am]

[75-445]

PANEL ON REVIEW OF MISCELLANEOUS EXTERNAL DRUG PRODUCTS

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Miscellaneous External Drug Products by the Secretary, Department of Health, Education, and Welfare, for an additional period of two years beyond July 16, 1975.

Authority for this committee will expire July 16, 1977, unless the Secretary formally determines that continuance is in the public interest.

Dated: June 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17453 Filed 7-3-75;8:45 am]

[75-452]

PANEL ON REVIEW OF MISCELLANEOUS INTERNAL DRUG PRODUCTS

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Miscellaneous Internal Drug Products by the Secretary, Department of Health, Education, and Welfare, for an additional period of two years beyond July 16, 1975.

Authority for this committee will expire on July 16, 1977, unless the Secretary formally determines that continuance is in the public interest.

Dated: June 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17452 Filed 7-3-75;8:45 am]

[75-442]

PANEL ON REVIEW OF ORAL CAVITY DRUG PRODUCTS

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Oral Cavity Drug Products by the Secretary, Department of Health, Education, and Welfare, for an additional period of two years beyond July 16, 1975.

Authority for this committee will expire on July 16, 1977, unless the Secretary formally determines that continuance is in the public interest.

Dated: June 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17449 Filed 7-3-75;8:45 am]

[FDA-225-75-4073]

MARYLAND FOOD PROCESSING AND STORAGE FACILITIES INSPECTION

Memorandum of Understanding With the Maryland Environmental Health Administration

The Maryland Environmental Health Administration and the Food and Drug Administration have entered into an agreement concerning certain related objectives in carrying out their respective responsibilities. The agreement, which sets forth the working arrangements to be followed or adopted concerning inspection of all Marvland food processing and storage facilities of mutual obligation, reads as follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF FOOD AND DRUGS, MARYLAND ENVIRONMENTAL HEALTH ADMINISTRATION AND THE BALTIMORE DISTRICT, FOOD AND DRUG ADMINISTRATION

I. *Purpose.* It is the purpose of this understanding to provide more effective consumer protection through more efficient utilization of manpower and resources available to both parties to this understanding.

II. *Work-sharing program.* A. Goals and Responsibilities: The parties to this understanding will share the responsibility for the inspection of all Maryland food processing and storage facilities of mutual obligation. Close coordination and communication will be maintained, and there will be joint planning and work scheduling to assure that manpower is efficiently utilized and regulatory efforts are properly meshed to achieve a high level of industry compliance.

B. Inspectional Obligation: 1. Inspection Inventory: An inventory of firms covered by this understanding, hereinafter referred to as the cooperative establishment inventory (CEI), will be jointly prepared. The CEI will be maintained by the Food and Drug Administration's (FDA) data processing unit (DPU) and updated continuously as data is received from both agencies. The inventory will include the following industry categories: beverages, bakery products, processed and bulk grains, sugar products, fish, crabmeat, spices and condiments, canned fruits and vegetables, miscellaneous fruits and vegetables, nut products, oils, miscellaneous prepared foods, and stored food products.

2. Inspection Commitment: Each agency will make an annual commitment for the number of inspections it plans to make of CEI firms. The commitments will be made at the planning session held within the last quarter of the term of this understanding and will be included as an addendum to the understanding. Every effort will be made by both parties to meet the inspection commitment during the term. The commitment will be subject to review and modification in the event manpower is required for emergency duties.

III. *General Provisions.* A. Information Exchange: There will be a complete interchange of information between the agencies with respect to the CEI and to all areas of mutual obligation.

1. Inspection Reports: Each agency will provide copies of complete inspection reports to its partner agency. Reports of inspectional observations will be exchanged in a timely fashion, not to exceed 20 working days.

2. Assay Reports: All reports of assay of samples of products manufactured or stored by CEI firms will be exchanged for informational purposes.

3. Correspondence: Copies of all relevant written correspondence to and from CEI firms in the form of warning, informational or request letters will be exchanged in a timely fashion.

B. Work Planning: 1. Annual Plan: DPU will prepare an annual printout of the CEI plus a listing of scheduled firms by month for use in the joint preparation of a cooperative work plan.

2. Scheduling: DPU will prepare a printout of firms scheduled for inspection by the 15th of the month preceding the month to be inspected. The firms will be assigned jointly

to inspectors of both agencies. DPU will provide a listing of assigned firms to the state by the 1st of the month scheduled.

3. Accomplishments: A monthly accomplishment report will be prepared and sent to the state by the 10th of each month by FDA to show, in a cumulative fashion, each agency's accomplishment of its commitment.

C. Compliance Follow-up:

1. Responsibility: It will be the responsibility of the agency which discovers a violation during inspection of a CEI firm to determine the impact required to achieve compliance and to follow through to accomplish correction of the violation.

2. Impact Action: The responsible agency may elect one of several types of impact action: reinspection, product embargo or seizure, product recall, warning letter, joint follow-up inspection, administrative hearing, prosecution, referral to its partner agency, etc. If referral is selected, it will become the responsibility of the partner agency to pursue the violation, within the limits of its authority, to achieve compliance.

D. Cross-Commissioning: During the first year of this cooperative program, the partner agencies will study the need for cross-commissioning to permit sanitarians or investigators of each agency to operate under state and federal law. If such commissioning is considered advisable, plans for its development, use, and control will be formulated.

E. Training: Training is considered essential for the maintenance of effective inspectional units. It will be discussed and planned at each planning session.

1. Formal: Formal training courses sponsored by either agency will be made available whenever possible for the partner's personnel.

2. On-the-job: Joint inspections will be used when indicated and requested by a partner agency to train new personnel or to update the expertise of experienced personnel.

F. Recall and Emergency: The agencies will cooperate to the fullest extent possible in handling emergency public health problems involving foods.

1. Recall Effectiveness Checks: Each agency will cooperate with the other in checking the effectiveness of product recalls in removing foods which threaten the public health from the market. The state will respond promptly, within the limits of available manpower, to FDA requests for aid during Class I recalls.

2. Foodborne Illness: The coordination of foodborne illness investigations will be studied during the term of this understanding and a plan will be developed for their incorporation in the program during the second year.

3. Disaster Work: Problems involving food contamination caused by disasters such as flood, fire, hurricane, carrier wreck, etc., will be handled jointly. A plan for coordination of such investigations will be developed during the term of this understanding.

G. Consumer Complaints: 1. Interstate: If investigation of a consumer complaint involving food contamination reveals out-of-state manufacturer responsibility, Baltimore District FDA will request investigation of the involved manufacturer and provide feedback information to the state.

2. Intrastate: Complaints received by either agency involving CEI firms will be investigated by the agency currently responsible for inspection of the involved firm.

H. Performance Evaluation: During the first year of operation of this cooperative program, a procedure for evaluation of the quality of program performance will be developed.

I. Program Review: Joint planning sessions will be held semi-annually to review this understanding, discuss the cooperative program, evaluate accomplishments and plan future cooperative work. The first session will be held within 6 months of the signing of this memorandum; the second will be held 6 months thereafter. Each session will be arranged for, and moderated by, the FDA's Region III Food and Drug Director's Assistant for Intergovernmental Affairs.

IV. *Term of Understanding.* This understanding will expire on July 31, 1976, unless renewed and signed by both cooperating agencies to continue it in effect for another year. A new memorandum of understanding will be prepared each year with asterisks included to indicate revisions.

This understanding in its entirety, or in part, may be revised by mutual consent or terminated upon 30 days written notice by either agency.

V. *Non-Discriminatory Clause.* The parties hereto agree to operate under this understanding so that no one, if otherwise qualified, may be denied employment or other benefits on the ground of race, color, sex, religion, age, political affiliation or opinion, handicap, national origin or other non-merit factors or may be otherwise subjected to discrimination.

Approved and accepted for the Maryland Environmental Health Administration:

By: Donald H. Noren, Director, Maryland Environmental Health Administration.

Dated: June 11, 1975.

Approved and accepted for the Food and Drug Administration:

By: M. L. Stralt, Deputy Regional Food and Drug Director, Food and Drug Administration, Baltimore District.

Dated: June 11, 1975.

Effective date. This Memorandum of Understanding became effective June 11, 1975.

Dated: June 27, 1975.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.75-17456 Filed 7-3-75;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[FDAA-472-DR; NFD-282]

MONTANA

Major Disaster and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on June 28, 1975, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Montana resulting from flooding caused by severe storms, heavy rains, and snowmelt beginning about June 19, 1975, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Montana.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Donald G. Eddy, HUD Region VIII, to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Montana to have been adversely affected by this declared major disaster:

The Counties of:

Cascade	Lewis and Clark
Flathead	Pondera
Glacier	Teton

Dated: June 28, 1975.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

[FR Doc.75-17535 Filed 7-3-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX75-22; Notice 1]

MOTOR COACH INDUSTRIES, INC.

Petition for Modification of Temporary Exemption From Federal Motor Vehicle Safety Standard

General Motors Corporation ("GM") has petitioned the National Highway Traffic Safety Administration to modify the temporary exemption from Federal Motor Vehicle Safety Standard No. 121, Air brake systems, 40 CFR 571.121, granted Motor Coach Industries ("MCI").

By an order published March 18, 1975 (40 FR 12307), the Administrator granted MCI and TMC (an allied corporation) "NHTSA Temporary Exemption Nos. 75-6A for MC5-B buses, expiring May 1, 1975, and 75-6B for MC-8 buses, expiring September 1, 1975, from Motor Vehicle Safety Standard No. 121 (paragraph S5.3.1 only.)" GM has asked that the scope of the exemption be narrowed and that the MC-8 buses be retrofitted to comply with Standard No. 121. Specifically, GM states that MCI's problem concerns only the lightly loaded third axle and that "MCI should be required to meet all the requirements of FMVSS 121 including the majority of S5.3.1 except for the lightly loaded third axle which should be exempted only from the 'no-lockup' requirements of S5.3.1." In addition GM argues that "* * * once the problem with the * * * computer on the third axle has been resolved, MCI should be able to retrofit each MC-8 bus manufactured during the exemption period and thus bring each of the buses into complete compliance with FMVSS 121." GM believes that "such a requirement will significantly alleviate the serious competitive disadvantages which non-exempt intercity bus manufacturers and their customers will experience dur-

ing the exemption period," thus reducing "the substantial manufacturing cost and owner maintenance cost differences between exempt and non-exempt intercity buses." Finally it argues that retrofitting is in the public interest since the vehicles concerned are public conveyances that will be in continuous use over many years.

The Administrator is considering granting GM's request in part. With respect to modifying the total exemption from S5.3.1 Stopping distance—trucks and buses, the NHTSA understands that MCI is, in fact, complying with all portions of S5.3.1 except the portion prohibiting lockup. Thus a modification of the terms of the exemption would not appear to cause MCI substantial economic hardship. The NHTSA has learned that MC–8 coaches produced by TMC and one-half of MCI's MC–8 production since the grant of the exemption have conformed with Standard No. 121. This means that approximately seven coaches a week are being manufactured under the exemption. The mechanics of retrofit, as NHTSA understands it, involves installation of wiring harnesses for the antilock systems, plus the installation of the antilock system and allied components. Buses manufactured thus far under the exemption do not have this wiring installed. To retrofit them would require removing them from service, and returning them to the factory for modifications costing approximately $2,500 per vehicle. NHTSA understands, however, that around July 1, 1975, MCI intends to install the wiring harness as part of its production process. Thus, retrofit of these vehicles would involve only installation of the antilock systems and allied components, and at a substantially lower cost of $700 per vehicle. If current production schedules are maintained, approximately 60 exempted coaches will be produced between July 1, 1975, and September 1, 1975, when the exemption expires. To require retrofitting these buses at a cost of $42,000 would not appear to create a hardship for MCI which, in its original petition, estimated a net income for 1975 of over $2,000,000 even if its petition were denied. The Administrator therefore is considering terminating Temporary Exemption No. 75–6B and issuing a new exemption that would expire September 1, 1975, conditioned upon retrofit by January 1, 1976, of all vehicles produced under it.

Interested persons are invited to submit comments on the petition by General Motors to modify the Motor Coach Industries temporary exemption, as described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed, and will be considered to the extent possible. Notice of action upon the petition will be published in the FEDERAL REGISTER pursuant to the authority indicated below.

Comment closing date: July 18, 1975.

Proposed effective date: Date of issuance of exemption.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.51 and 501.8.)

Issued on July 1, 1975.

ROBERT L. CARTER,
Associate Administrator
Motor Vehicle Programs.

[FR Doc.75–17685 Filed 7–3–75;8:45 am]

ADVISORY COMMITTEE ON FEDERAL PAY

PROPOSED ADJUSTMENTS IN FY 1976

Meeting

The Advisory Committee on Federal Pay announces two public discussions of the proposed adjustment in Federal pay for Fiscal 1976, to be held in Room 601, 1016 16th Street NW., Washington, D.C.

On Tuesday, July 22, beginning at 10:00 a.m., the Committee will meet with organizations representing Federal employees or any interested government officials to obtain their views on the President's Pay Agent's report on the proposed adjustment. (The Pay Agent's report is scheduled for completion about July 18. Organizations representing Federal employees can request a copy of that report from the Committee.) Organizations representing Federal employees or interested government officials wishing to discuss the report with the Committee orally or in writing should notify the Committee by Thursday, July 17, either by writing or calling the Committee (Area Code 202–382–2296). Written comments on the report should reach the Committee at its offices—Room 101, 1016 16th Street NW., Washington, D.C. 20036—by July 25. (Four copies of written statements should be submitted.) Both written submissions or requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

On Wednesday, July 23, at 9:30 a.m., the Committee will discuss the Pay Agent's report with representatives of the President's Pay Agent.

The Advisory Committee on Federal Pay, established as an independent establishment by section 5306 of Title V, United States Code (Pub. L. 91–656, the Federal Pay Comparability Act) is charged with assisting the President in carrying out the policies of section 5301 of Title V, United States Code. The Committee's fundamental obligation is to afford the President an independent judgment respecting Federal pay. Section 5306 of Title V requires the Committee to make findings and recommendations to the President with respect to the annual adjustment in Federal pay, after considering the written views of employee organizations, the President's Agent, other officials of the government of the United States and such experts as the Committee may consult.

The Committee will also meet in executive session on July 29, 30, and 31 to prepare its report to the President on the Fiscal 1976 adjustment in Federal pay. The discussions will take place in New York City—425 Park Avenue (17th floor). They will start at 9:30 a.m. This report will incorporate the Committee's findings and recommendations to the President, based on the material presented by the individuals and organizations that have submitted their views to the Committee and on the experience, knowledge and judgment of the members of the Committee. Materials, which the Committee will use in making its decision, will have been presented in open discussions or in written reports, available for public inspection.

The Committee consists of three members appointed by the President, who are experts in the field of labor relations and pay policy and, who are generally recognized for their impartiality. Their initial views may well be diverse. In order to facilitate the independent development of consensus findings and recommendations, the members must be free to take tentative and subjective positions, to be frank and candid about their views, to experiment with various proposals, and to make assumptions and present conclusions arguendo. Tentative individual opinions, preliminary judgments and policy positions will be so integrated throughout the deliberations with factual matters that separation would not be feasible. Under the Pay Comparability Act, these deliberations of the Committee are analogous to the development of policy within an agency exercising statutory functions. The exposure of this predecisional deliberative process would have a "chilling" effect upon the frank and candid exchange of views that is essential to the development of considered independent recommendations.

The Federal Advisory Committee Act (5 U.S.C.A. App. I, Pub. L. 92–463) does not require public participation in the development of the Committee's findings and recommendations. The Freedom of Information Act authorizes the exemption from disclosure of inter- or intra-agency memoranda or letters where the documents are not final determinations and such exemptions are necessary to prevent undue inhibition of pre-decisional processes (5 U.S.C. 552(b)(5)). The deliberative process by which the Advisory Committee on Federal Pay arrives at independent judgments to transmit to the President is a pre-decisional process which must remain uninhibited and thus undisclosed in order that the Committee may supply maximum assistance to the President in making his final decision. This process is therefore, within the above exemption of the Freedom of Information Act extended to advisory committees through the Federal Advisory Committee Act.

Therefore, by authority of section 10 (d) of Pub. L. 92-463, the Federal Advisory Committee Act, the Director of the Office of Management and Budget has determined that the meetings of the Advisory Committee on Federal Pay of July 29, 30, and 31, 1975, to develop its findings and recommendations with respect to the annual adjustment in Federal pay will concern matters within section 552(b)(5) of Title 5, United States Code, and therefore shall not be open to the public.

The final findings and policy recommendations of the Committee will be made public by the President.

JEROME M. ROSOW,
Chairman Advisory Committee on Federal Pay.

[FR Doc.75-17687 Filed 7-3-75;9:46 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-1729]

ALLIED-GENERAL NUCLEAR SERVICES, ET AL. (BARNWELL FUEL RECEIVING AND STORAGE STATION)

Receipt of Application for Materials License; Notice of Consideration of Issuance of Materials License and Notice of Opportunity for Hearing

In the matter of Allied-General Nuclear Services, Allied Chemical Nuclear Products, Inc., and General Atomic Co. (Barnwell Fuel Receiving and Storage Station).

Notice is hereby given pursuant to 10 CFR 2.105(a)(4) that the Nuclear Regulatory Commission (Commission) has received an application for a materials license from Allied-General Nuclear Services, et al. (Applicants) to receive and possess irradiated fuel assemblies (byproduct material, source material and special nuclear material) at the Barnwell Fuel Receiving and Storage Station (BFRSS) of the Barnwell Nuclear Fuel Plant (BNFP) located on the Applicants' site six miles west of the town of Barnwell, Barnwell County, South Carolina. The license would terminate upon issuance of a facility operating license for the BNFP Separations Facility.

The BNFP Separations Facility which is being constructed pursuant to Construction Permit No. CPCSF-4, issued by the Commission on December 18, 1970, is the subject of a separate ongoing hearing before an Atomic Safety and Licensing Board. The proceeding on the BNFP Separations Facility is a consolidation of the hearing pursuant to 10 CFR Part 50, Appendix D, section B, on environmental issues relating to the Construction Permit and the hearing concerning the application for a facility operating license pursuant to 10 CFR Part 50 to operate the BNFP Separations Facility.

The Director of Nuclear Material Safety and Safeguards will consider the issuance of materials license to Allied-General Nuclear Services, et al. which would authorize the Applicants to receive and possess irradiated fuel assemblies at BFRSS in accordance with the provisions of the license and the technical specifications appended thereto upon (1) the completion of a favorable safety evaluation of the application by the Commission Staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; and (3) a negative finding on Item 1 and an affirmative finding on Items 2 and 3 specified below as a basis for issuance of a license to the Applicants:

1. Whether the issuance of the license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

2. Whether the Applicants meet the requirements of the Atomic Energy Act of 1954, as amended (Act), and the regulations of the Commission, as follows:

a. Whether in accordance with the provisions of 10 CFR 30.33(a):

i. The application is for a purpose authorized by the Act;

ii. The Applicants' proposed equipment and facilities are adequate to protect health and minimize danger to life or property; and

iii. The Applicants are qualified by training and experience to use the material for the purpose requested in such manner as to protect health and minimize danger to life or property.

b. Whether in accordance with the provisions of 10 CFR 40.32:

i. The application is for a purpose authorized by the Act;

ii. The Applicants are qualified by reason of training and experience to use the source material for the purpose requested in such manner as to protect health and minimize danger to life or property; and

iii. The Applicants' proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property.

c. Whether in accordance with the provisions of 10 CFR 70.23(a):

i. The special nuclear material is to be used for the conduct of research or development activities of a type specified in section 31 of the Act, in activities licensed by the Commission under section 103 or 104 of the Act or for such other uses as the Commission determines to be appropriate to carry out the purposes of the Act;

ii. The Applicants are qualified by reason of training and experience to use the material for the purpose requested in accordance with the regulations in Chapter 10 of the Code of Federal Regulations;

iii. The Applicants' proposed equipment and facilities are adequate to protect health and minimize danger to life or property;

iv. The Applicants' proposed procedures to protect health and to minimize danger to life or property are adequate; and

v. The Applicants' physical security plan submitted pursuant to § 70.22(h) meets the physical protection requirements of Part 73 of Chapter 10 of the Code of Federal Regulations.

3. Whether in accordance with the provisions of 10 CFR § 30.33(a), § 40.32 and § 70.23(a), on the basis of information filed and evaluations made pursuant to Part 51 of Chapter 10 of the Code of Federal Regulations, and after weighing the environmental, economic, technical, and other benefits against environmental and other costs and considering available alternatives, the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values.

By August 6, 1975, the Applicants may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene with respect to issuance of the materials license. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed within the time prescribed in this notice, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

A petition for leave to intervene must be filed under oath or affirmation in accordance with the provisions of 10 CFR 2.714. As required in 10 CFR 2.714, a petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by August 6, 1975. A copy of the petition and/or request for a hearing should also be sent to the Chief Hearing Counsel, Office of the Executive Legal

Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to Bennett Boskey, Esquire, 918 16th Street NW., Washington, D.C. 20006, attorney for the Applicants.

A petition for leave to intervene which is not timely will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request that the petitioner, in addition to the matters specified in 10 CFR 2.714(d), has made a substantial showing of good cause for failure to file on time. The reasons for the tardiness in filing a petition for leave to intervene, as well as the factors specified in 10 CFR 2.714(a)(1)–(4) shall be considered in making a determination whether there has been a substantial showing of good cause by the petitioner.

For further details, see the application for the license, dated July 3, 1974, and the Applicants' environmental report for the Separations Facility containing information necessary for the Commission's environmental review of the BFRSS, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Local Public Document Room, Mr. T. E. Richardson, Chairman, Board of Commissioners, P.O. Box 443, Barnwell, S.C. 29812. As they become available, the following documents may be inspected at the above locations: (1) The safety evaluation report prepared by the Office of Nuclear Material Safety and Safeguards; (2) the Commission's draft and final environmental statements; (3) the proposed license; and other relevant documents.

Copies of the Safety Evaluation Report and the Final Environmental Statement may be purchased, when available, from the National Technical Information Service, Springfield, Virginia 22161. The Draft Environmental Statement, identified as NUREG–74/026, the proposed license, and other relevant documents, when available, may be obtained by request to the Director, Division of Materials and Fuel Cycle Facility Licensing, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 26th day of June, 1975.

JAMES R. MILLER,
Fuel Cycle Licensing Branch 2 Division of Materials and Fuel Cycle Facility Licensing.

[FR Doc.75–17178 Filed 7–3–75;8:45 am]

[Docket No. P–531–A]

PUBLIC SERVICE COMPANY OF OKLAHOMA, INC.

Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c. of the Atomic Energy Act of 1954, as amended, a letter of advice from the Attorney General of the United States, dated June 23, 1973 a copy of which is attached as Appendix A.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by August 6, 1975 either (1) by delivery to the NRC Public Docketing and Service Section at 1717 H Street NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Section.

For the Nuclear Regulatory Commission.

ABRAHAM BRAITMAN,
Chief, Office of Antitrust & Indemnity Nuclear Reactor Regulation.

APPENDIX A

PUBLIC SERVICE COMPANY OF OKLAHOMA, INC. BLACK FOX NUCLEAR GENERATING STATION, UNITS 1 AND 2
NUCLEAR REGULATORY COMMISSION DOCKET NO. P–531–A

JUNE 23, 1975.

You have requested our advice pursuant to the provisions of the Atomic Energy Act of 1954, as amended, in connection with the above-cited application.

The facility. Black Fox Nuclear Generating Station will be located at a site in northeastern Oklahoma and will consist of two nuclear units, each with a net electrical output of 1150 megawatts (MW). The total cost of the project is estimated to exceed $1 billion. Public Service Company of Oklahoma (PSO) will construct and operate the facility. Associated Electric Cooperative, Inc. has already purchased a sizeable ownership interest in the plant (500 MW) and a cooperative bulk power supplier, and a number of municipal bulk power suppliers may ultimately enter into agreements for ownership participation in the facility.

The Applicant. PSO, headquartered in Tulsa, Oklahoma, serves customers in northeast, central, southeast and southwest Oklahoma. Applicant in August 1973 had a peak load of 1850 MW and estimates its current peak load at over 2070 MW. It is the second largest electric utility in Oklahoma, Oklahoma Gas and Electric Company being the largest. PSO's generating capability currently exceeds 2600 MW which allows for the maintenance of a sizeable level of reserves. Applicant's peak load is projected to almost double in the next 10 years. To meet this increase, PSO has planned or has under construction additional generating capacity which will increase its dependable system capacity to 5790 MW by 1985.

Applicant is a member of the Southwest Power Pool (SWPP), along with Grand River Dam Authority, Oklahoma Gas and Electric Company, Southwestern Electric Power Company, Southwestern Power Administration and Western Farmers Electric Cooperative. This power pool coordinates the planning and installation of generating units and certain interconnecting transmission facilities. In addition to SWPP, PSO has interconnection agreements with various other adjacent electric power suppliers, providing for various power exchange arrangements.

Four municipally owned distribution systems rely on PSO for their entire bulk power supply requirements; another five municipals and two cooperatives are partial wholesale customers.

Results of antitrust review. In the course of our antitrust review, the Department received certain allegations, the general import of which was that PSO has used its dominant position in generation and transmission in its service area to restrain the competitive opportunities of smaller systems with respect to bulk power supply. For its part, PSO denied these allegations and denied that its bulk power supply policies and practices have been or are inconsistent with the antitrust laws. In order to eliminate any questions as to the policies that it intends to follow in the future, PSO has formalized its policies in a Statement of Bulk Power Supply Policy. This policy is set out in the attachment to the letter of PSO's President, dated June 12, 1975, which is attached hereto. PSO has also indicated its willingness to have this Statement incorporated in the license for Black Fox Nuclear Generating Station.

The Department believes that the effectuation of this bulk power supply policy would moot all relevant issues as to which allegations of anticompetitive conduct on the part of PSO were made to the Department. The implementation of this policy should provide competitors of PSO with reasonable opportunities to maintain and further develop competitive sources of bulk power supply. PSO is agreeable to having the Commission include the contents of this Statement of Bulk Power Supply Policy as conditions to the license, and appears to have already taken steps to implement this policy.

PSO indicates that it is agreeable to imposition of the aforesaid conditions in its license with the understanding that, "the commitment to offer access to Black Fox Station Units 1 and 2 by participation 'up to a reasonable amount in kilowatts,' as set out in Section II, shall have been met when 400,000 kilowatts (200,000 kilowatts in each unit) is made available to Neighboring Entities and Neighboring Distribution Systems." Additionally, the Department understands that Associated Electric Cooperative, Inc. has contracted for an ownership interest in Black Fox Station which will entitle it to obtain 250 MW from each 1150 MW Black Fox Station unit. Consequently, of the 1150 MW in each unit, PSO is offering 200 MW to Neighboring Entities and Neighboring Distribution Systems and 250 MW is committed to Associated Electric Cooperative, Inc. On the basis of information available to the Department, it does not appear that the foregoing allocation of power from the Black Fox Station Units 1 and 2 is unreasonable.

In light of the foregoing, we conclude that an antitrust hearing will not be necessary with respect to the instant application, if the Commission issues a license conditioned as indicated above.

PUBLIC SERVICE COMPANY OF OKLAHOMA

JUNE 12, 1975.

Attached is Statement of Bulk Power Supply Policy of Public Service Company of Oklahoma as per our recent discussions.

These affirmations are made with the understanding that the Department of Justice will recommend to the Nuclear Regulatory Commission that no antitrust hearing will be required and on that basis, the Company agrees that these affirmations may be included as conditions to the NRC construction permits and operating licenses for the Black Fox Station Units 1 and 2.

The Company continues to maintain that its policies and practices have been consistent with the antitrust laws and that these affirmations do not expand or extend any

practices not presently in effect with all neighboring entities and neighboring distribution systems desiring to enter into implementing contracts and agreements. The affirmations are subject to the following additional understandings:

1. Nothing therein shall be construed as a waiver by Company of its right to contest whether or not or the extent to which a particular factual situation may be covered by this statement of policy or preclude Company from contesting an alleged act of unfair competition.

2. Nothing therein is intended to preclude Company and a Neighboring Entity or a Neighboring Distribution System from reaching an agreement which extends, varies or supplements the provisions of the commitments in a manner not inconsistent with the purposes expressed therein and applicable law.

3. Company reserves the right of recourse to the appropriate forum to seek such changes therein as may at the time be appropriate in accordance with the law and good industry practices.

4. Company does not consent by these commitments to become a common carrier.

5. Company reserves all rights and protection afforded it by law with respect to retail distribution and sale of retail electric service.

6. All of the understandings and commitments of the Company are contained in the commitments herein made and this cover letter.

I also wish to state again that these affirmations are being made subject to the acknowledgment by the Department of Justice or the Nuclear Regulatory Commission that the commitment to offer access to Black Fox Station Units 1 and 2 by participation "up to a reasonable amount in kilowatts," as set out in Section II, shall have been met when 400,000 kilowatts (200,000 kilowatts each unit) is made available to Neighboring Entities and Neighboring Distribution Systems. And, further, that Associated Electric Cooperative, Inc. has executed an agreement in joint ownership for not less than 500,000 kilowatts and neither Public Service Company of Oklahoma or Associated shall be required to reduce their ownership so as to increase the quantity offered for participation above 400,000 kilowatts.

PUBLIC SERVICE COMPANY OF OKLAHOMA

STATEMENT OF BULK POWER SUPPLY POLICY

I. *Definitions.* (a) "Applicable Area" means that area in which now, or in the future, the Company has electrical facilities and those areas reasonably proximate thereto.

(b) "Bulk Power" means electric capacity and any attendant energy supplied or made available by one electric utility to another at transmission or subtransmission voltages.

(c) "Company" means Public Service Company of Oklahoma, a corporation, any successor corporation, or any assignee of the Company.

(d) "Neighboring Entity" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which is financially responsible and owns, contractually controls or operates or in good faith proposes to own, contractually control or operate electrical facilities for the generation, and transmission or distribution of electricity which meets each of the following criteria: (1) Its existing or proposed facilities are technically feasible of interconnection with those of the Company; (2) its existing or proposed facilities are within the applicable area; (3) with the exception of the municipalities, cooperatives and government agencies it is, or upon commencement of operations will be, a public utility under the laws of the State in which it transacts or will transact business or under the Federal Power Act.

(e) "Neighboring Distribution System" means a private or public corporation, governmental agency or authority, municipality, rural electric distribution cooperative or lawful association of any of the foregoing which is financially responsible and which engages or in good faith proposes to engage in the distribution of electric energy at retail, whose existing or proposed facilities are technically feasible of connection to those of the Company, and which meets each of the criteria numbered (2) and (3) in subparagraph (d) above.

II. *Access to Black Fox Station Units 1 and 2.* (a) Company shall afford any Neighboring Entity or Neighboring Distribution System that has made a request prior to July 1, 1975. an opportunity to participate in the ownership of (or if the requesting party so elects, purchase unit participation power from) the Black Fox Station Units 1 and 2, up to a reasonable amount in kilowatts.

(b) Company will promptly provide any requesting Neighboring Entity or Neighboring Distribution System with all available data to assist such entity in making feasibility study as to its participation.

(c) Each Neighboring Entity and each Neighboring Distribution System desiring to participate in the Black Fox Station Units 1 and 2 must enter into a legally binding and enforceable participating agreement by April 1, 1976.

(d) Company shall make interconnection and coordinating agreements for transmission service from the Black Fox Station Units 1 and 2 to any Neighboring Entity or Neighboring Distribution System which is a participant in the station. Participating entities or systems shall take delivery of and title to their pro rata share of the station output at the station bus.

(e) Company will afford any Neighboring Entity or Neighboring Distribution System that makes a timely request an opportunity to own a reasonable portion of, or to purchase, a reasonable part of the output of any other nuclear generating unit of the Company.

III. *Interconnection.* (a) Company will enter into interconnection and coordination agreements to interconnect and operate in parallel with any Neighboring Entity.

(b) Interconnections shall not be limited to any voltage when another voltage is available with adequate capacity in the area where interconnection is desired. Control and communications facilities and operating procedures, as are reasonably required for safe and prudent operation of the interconnected systems, must be provided, consistent with the law and sound industry practices in the region.

(c) The cost of the interconnection facilities and the dedication of electric system shall be shared by the parties to the interconnection on the basis of benefit to each of the parties.

(d) Company's interconnection and coordination agreements will provide for emergency support capacity and energy as available from one system as needed by another system to replace capacity and energy made unavailable due to forced outages of generating equipment or transmission facilities, and maintenance support capacity and energy planned by one system to be made available to another system to replace capacity and energy made unavailable due to scheduled maintenance of generating equipment or transmission facilities.

(e) Company's interconnection agreements shall not embody provisions which impose limitations upon the use or resale of power and energy sold or exchanged, but may include appropriate provisions to protect the reliability of Company's system.

(f) Company's interconnection agreements shall not prohibit the parties from entering into other interconnection or coordination agreements, but may include appropriate provisions to protect the reliability of Company's system, and to insure that Company is compensated for any additional costs resulting from such other interconnection or coordination agreements.

IV. *Reserve coordination.* (a) Company and Neighboring Entities with which it interconnects shall mutually agree upon a level of minimum reserves to be installed or provided to maintain a total reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems consistent with the law and sound industry practices in the region. The reserve responsibility thus determined shall be expressed as a percentage of the estimated annual peak load, adjusted for purchases and sales of firm power of the interconnected systems, unless the parties agree otherwise. No party to the interconnection shall be required to install or provide more than such percentage minimum reserve margin.

(b) If during any year it has generating capacity in excess of the amount called for by its own reserve criteria, the Company will sell such excess to an interconnected Neighboring Entity when requested, subject to reasonable prior commitments, and on terms which enable Company to recover its costs.

V. *Transmission services.* (a) Company will provide transmission service for Bulk Power transactions (1) between two or among more than two Neighboring Entities with which, now or in the future, it is interconnected; (2) between a Neighboring Entity with whom, now or in the future, it is interconnected and a Neighboring Distribution System(s) with whom, now or in the future, it is connected; and (3) between any Neighboring Entity or Neighboring Distribution System(s) and any other electric system engaging in Bulk Power supply outside the applicable area between whose facilities the Company's transmission lines and the transmission lines of other consenting electric systems form a continuous electrical path.

(b) Company shall not be required to provide the transmission service described in paragraph (a) of this section if to do so would impair Company's system reliability or utilize facilities needed to meet its own anticipated requirements provided the requirements of subsection (e) of this section are complied with.

(c) Company may require any Neighboring Entity or Neighboring Distribution System requesting transmission service to give reasonable advance notice to Company of its schedule and requirements.

(d) In situations in which Company's transmission system is used to supply power and energy to meet the fluctuating demand of a Neighboring Entity or Neighboring Distribution System, Company may require the Neighboring Entity or Neighboring Distribution System to provide in advance estimated hourly schedules of deliveries to and from Company's transmission system. When the quantity of power and energy delivered to the Company is not concurrent with and equal to that delivered by Company, includ-

ing losses, Company shall be entitled to recovery of costs for providing such power and energy deficiency which it may supply for or in behalf of the Neighboring Entity or Neighboring Distribution System. The Neighboring Entity or Neighboring Distribution System requesting transmission service may, if it so elects, install telemetering devices to ensure that the quantity of power and energy delivered to Company is concurrent with and equal to that delivered by Company.

(e) Company shall include in its planning and construction programs such increases in the capacity of its existing or planned transmission facilities as may be required for the transactions referred to in paragraph (a) of this section VI, provided any Neighboring Entity or Neighboring Distribution System gives Company sufficient advance notice as may be necessary to accommodate the requirements of the Neighboring Entity or Neighboring Distribution System from a technical standpoint. This section shall not be construed to require Company to construct new transmission lines for the sole benefit of a Neighboring Entity or Neighboring Distribution System. Company shall not be required to increase the transmission capacity of its existing or planned transmission facilities if to do so would impair its system reliability. Company may require the Neighboring Entity or Neighboring Distribution System requesting the construction of increased transmission capacity to make a reasonable non-refundable contribution in aid of construction where appropriate.

(f) Company shall be entitled to recovery of costs for any transmission services it performs for or in behalf of any Neighboring Entity or Neighboring Distribution System.

VI. *Bulk power sales.* Company shall sell power on a full or partial requirements basis to any Neighboring Distribution System. Power sales agreements shall not restrict use or resale of power sold pursuant to such agreements but may include appropriate provisions to protect the reliability of Company's system and ensure recovery of cost for the services provided. Such power delivery will not be restricted to any voltage when another voltage is requested and available or can be made available with adequate capacity in the area where connection is desired. Company shall not be required to make any such sale if it does not have available sufficient generation or transmission capacity to provide the requested service or if the sale would impair its ability to render adequate and reliable service to its own customers.

VII. *Other power exchanges.* Company currently has on file with the Federal Power Commission interconnection agreements with Neighboring Entities providing for the sale and purchase of Bulk Power. Company will, on a fair and equitable basis, enter into interconnection agreements with Neighboring Entities providing for the same or similar power transactions. In order to facilitate the making of such transactions, Company will respond promptly to inquiries of Neighboring Entities concerning the availability of Bulk Power from its system.

VIII. *Regulatory Commission jurisdiction.* The foregoing policies are to be implemented and applied in a manner consistent with the Federal, State and local laws, regulations and orders. The recovery of costs, charges, conditions, terms and practices are and will be subject to the acceptance or approval of any regulatory agencies or courts having jurisdiction over them.

[FR Doc.75-17330 Filed 7-3-75;8:45 am]

[Docket No. 50-261]

CAROLINA POWER & LIGHT CO.

Proposed Issuance of Amendment to Provisional Operating License

The Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR-23 issued to Carolina Power and Light Company (the licensee) for operation of the H. B. Robinson Unit No. 2, a pressurized water reactor, located in Darlington County, Hartsville, South Carolina and currently authorized for operation at power levels up to 2200 Mwt.

The amendment would revise provisions in the Technical Specifications in accordance with the licensee's applications for license amendments dated October 2, 1974 and March 14, 1975. The amendment would modify operating limits in the Technical Specifications based upon an evaluation of ECCS performance caculated in accordance with an acceptable evaluation model that conforms to the requirements of the Commission's regulations in 10 CFR Part 50, § 50.46. The amendment would modify various limits previously established in accordance with the Commission's Interim Acceptance Criteria, and would, with respect to H. B. Robinson Unit No. 2, terminate the restrictions imposed by the Commission's December 27, 1974, Order for Modification of License, and would impose instead, limitations established in accordance with the Commission Acceptance Criteria for Emergency Core Cooling Systems for Light Water Nuclear Power Reactors, 10 CFR Part 50, § 50.46.

Prior to issuance of the proposed license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By August 6, 1975, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of the amendment to the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts, Trowbridge & Madden, Barr Building, 910 17th Street NW., Washington, D.C. 20006, the attorney for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the applications for amendments dated October 2, 1974 and March 14, 1975, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. The license amendment and the Safety Evaluation, when issued, may be inspected at the above locations and a copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland this 27th day of June 1975.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch #3, Division of Reactor Licensing.

[FR Doc.75-17463 Filed 7-3-75;8:45 am]

[Docket No. STN 50-482]

KANSAS GAS AND ELECTRIC CO. AND KANSAS CITY POWER AND LIGHT CO.

Availability of NRC Draft Environmental Statement for Wolf Creek Generating Station, Unit No. 1

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's

regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed Wolf Creek Generating Station, Unit No. 1 located in Coffey County, Kansas, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and in the Office of the County Clerk, Coffey County Courthouse, Burlington, Kansas. The Draft Statement is also being made available at the Budget Division, Department of Administration, 1st Floor—State House, Topeka, Kansas 66612. Copies of the Commission's Draft Environmental Statement may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing, Office of Nuclear Reactor Regulation.

The Applicant's Environmental Report, as supplemented, submitted by Kansas Gas and Electric Company is also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the FEDERAL REGISTER on August 30, 1974 (39 FR 31683).

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Applicant's Environmental Report, as supplemented, and the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Applicant's Environmental Report and the Draft Environmental Statement (local agencies may obtain these documents upon request). Comments are due by August 25, 1975. Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's public Document Room in Washington, D.C. and the Office of the County Clerk, Coffey County Courthouse, Burlington, Kansas. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Environmental Statement from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 30th day of June 1975.

For the Nuclear Regulatory Commission.

GORDON K. DICKER,
Chief, Environmental Projects Branch 2, Division of Reactor Licensing.

[FR Doc.75-17462 Filed 7-3-75;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 5.51, "Management Review of Nuclear Material Control and Accounting Systems," describes the purpose and scope, personnel qualifications, depth of detail, and procedures that are acceptable to the NRC staff for the management review of nuclear material control systems.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed (listed below) or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 5.51 will, however, be particularly useful in evaluating the need for an early revision if received by September 4, 1975.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement of an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 5 Regulatory Guides currently being developed include the following:

Mass Calibration Techniques for Nuclear Material Control.
Calibration and Error Estimation Methods for Nondestructive Assay.
Protection of Nuclear Power Plants Against Industrial Sabotage.
Measurement Control Program for Special Nuclear Material Control and Accounting.
Monitoring Transfers of Special Nuclear Material.
Considerations for Determining the Systematic Error of Special Nuclear Material Accounting Measurement.
Interior Intrusion Alarm Systems.
Preparation of Uranyl Nitrate Solution as a Working Standard.
Shipping and Receiving Control of Special Nuclear Materials.
Barrier Design and Placement.
Internal Security Audit Procedures.
Nondestructive Assay of Plutonium-Bearing Fuel Rods.
Training and Qualifying Personnel for Performing Measurement Associated with the Control and Accounting of Special Nuclear Material.
Auditing of Measurement Control Program.
Reconciliation of Statistically Significant Shipper-Receiver Differences.
Prior Measurement Verification.
Verification of Prior Measurements by NDA.
Nondestructive Assay of High-Enrichment Uranium Scrap by Active Neutron Interrogation.
Control and Accounting for Highly Enriched Uranium in Waste.
Considerations for Determining the Random Error of Special Nuclear Material Accounting Measurement.
Use of Closed Circuit TV for Area Surveillance.
Preparation of Working Calibration and Test Materials for Analytical Laboratory Measurement Control Programs—Part I: Plutonium Nitrate Solutions.
Preparation of Working Calibration and Test Materials for Analytical Laboratory Measurement Control Programs — Plutonium Oxide.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 27th day of June 1975.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Acting Director, Office of Standards Development.

[FR Doc.75-17465 Filed 7-3-75;8:45 am]

[Docket No. 50-357]

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

Withdrawal of Application for Facility License

The University of California, Santa Barbara, by letter dated April 7, 1975, has requested withdrawal of its application for license to construct a TRIGA Mark I reactor facility on the University's campus located in Santa Barbara, California. A copy of the letter of withdrawal is available for public inspection in the Commission's Public Document Room 1717 H Street, NW., Washington, D.C. The Nuclear Regulatory Commission grants the applicant's request for withdrawal of this application.

Notice of receipt of the application was published in the FEDERAL REGISTER on March 26, 1970 (35 FR 5133).

Dated at Bethesda, Maryland, this 26th day of June 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch #1, Division of Reactor Licensing.

[FR Doc.75-17464 Filed 7-3-75;8:45 am]

[Docket No. P-533-A]

NEW ENGLAND POWER CO.

Notice of Receipt of Partial Application for Construction Permit and Facility License

New England Power Company (the applicant), pursuant to section 103 of the

Atomic Energy Act of 1954, as amended, has filed one part of an application, dated April 25, 1975, in connection with their plans to construct and operate two reactors in Charlestown, Rhode Island. The portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR Part 50, Appendix L.

The remaining portion of the application consisting of a Preliminary Safety Analysis Report accompanied by an Environmental Report pursuant to § 2.101 of Part 2, is expected to be filed in February 1976. Upon receipt of the remaining portions of the application dealing with radiological health and safety and environmental matters, separate notices of receipt will be published by the Commission including an appropriate notice of hearing.

A copy of the partial application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. Docket No. P–533–A has been assigned to the application and it should be referenced in any correspondence relating to it.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Office of Antitrust and Indemnity, Office of Nuclear Reactor Regulation, on or before August 29, 1975.

Dated at Bethesda, Maryland, this 20th day of June 1975.

For the Nuclear Regulatory Commission.

KARL KNIEL,
Chief, Light Water Reactors Branch 2–2 Division of Reactor Licensing.

[FR Doc.75–16668 Filed 6–27–75;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 28026; Order 75–6–147]

ALLEGHENY AIRLINES, INC.

Order of Investigation and Suspension Regarding Extension of Individual Inclusive Tour Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of June, 1975.

By tariff revisions[1] marked to become effective July 1, 1975, Allegheny Airlines, Inc. (Allegheny) proposes to extend its individual inclusive tour excursion fares (IT) in 87 domestic markets (all over 200 miles in distance) from the current expiration date of July 15, 1975 to July 15, 1976. The fares offer a discount of 20 percent from normal jet custom and propeller class fares, are restricted to round-trip travel, and are available only between midnight Friday and midnight Sunday. The fares became effective June 15, 1974.

Allegheny reports that, through March 1975, 2,319 passengers have used the IT fares, and submits a profit-impact statement indicating a net profit of $7,056, based on an assumed generation of 40 percent.[2] The carrier concedes a disappointingly low level of traffic generation, which it alleges resulted from the fact that promotional travel brochures had already been printed by wholesalers and retailers for last year's peak summer and fall travel periods and that the program was therefore unknown to many potential passengers. Because of the low level of usage, there are allegedly "no meaningful data upon which to reach definitive conclusions regarding the economics of the program." It notes that a December, 1974 inflight survey indicated less than one percent of the sample represented IT passengers. It is contended that an additional year's extension is necessary to determine the "ultimate value" of the program, although no estimate as to its expected financial effect has been provided.

Complaints have been filed by American Airlines, Inc. (American), Northwest Airlines, Inc. (Northwest) and Trans World Airlines, Inc. (TWA). All three carriers argue that the lack of traffic response to the fare is sufficient to call for suspension, and allege that Allegheny's attempt to refile a promotional fare which has failed to generate traffic flies in the face of the Board's attempt to eliminate useless promotional fares. TWA characterizes the tariff as "junk" fares that "clutter" the tariff pages. It is contended that Allegheny's filing does not comply with the requirement of Order 74–6–74 which initially approved the fares; that they have clearly been a failure in generating additional traffic; and that Allegheny's stated reason for this failure is "absurd." TWA also argues that the existence of more promotional fares in the markets involved at this time makes it likely that there would be even less response to the IT fare this year than last.

Allegheny has answered the complaints, reiterating its previous support for continuation of the fares and contending that the complainants have provided no reasonable basis for terminating the experiment at this time. It stresses the insufficient data base upon which to reach any meaningful judgment concerning the economic merits of the program as the primary reason for continuing it for another year. Finally, Allegheny notes that tour-basing fares are not unique to its system and that, in view of their relatively low usage, it is reasonably certain that the fares have not had a significant diversionary impact on other carriers.

Upon consideration of all relevant matters, the Board has concluded that extension of the proposed fares may be unjust, or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the fares should be suspended pending investigation.

When these IT fares were previously before the Board, it was argued by dissenting member Minetti that they should not be suspended in any of the markets in which they were proposed. (See Order 74–6–74 and attachments thereto.) The present situation, however, is quite different. The Board has always held the view that a carrier seeking to renew discount fares should furnish a detailed justification based on its experience with them, and this Allegheny has not done. Indeed, from the data Allegheny has provided, it would appear that this particular fare experiment has not been successful. It has not been shown to have lowered the cost of air transportation and no persuasive reason is offered why it should be continued.

Since these fares were first proposed a number of discount fares have been introduced which offer the air traveller various options for low cost travel in the markets involved. Thus, the suspension of these fares should have little adverse impact on the consumer. In view of this, it does not appear necessary in the public interest that unproductive discount fares should continue to clutter up the tariffs indefinitely. In fact, with the new promotional fares now available on Allegheny's system, generation from the IT fare would very likely be even less in the future than it has been in the past year. The carrier's pleadings do not disclose that the carrier or tour operators have any plans to develop IT traffic, or that the carrier has made any study or survey of traffic potential.[4]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204, 403, 404, and 1002 thereof,

It is ordered, That:

1. An investigation be instituted to determine whether the provisions in Appendix A[5] attached hereto, and rules, regulations and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions described in Appendix A hereto are suspended and their use deferred to and including October 12, 1975, unless otherwise ordered by the Board, and that no changes be

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 249.

[2] It is not clear from Allegheny's justification whether these data include 22 transborder markets, which will be dealt with by separate order.

[4] We do not find persuasive the fact that other carriers maintain tour-basing fares. These fares are generally successful in markets which are heavily vacation oriented. Allegheny's system is not of this character, a fact which in our judgment probably explains the lack of success of the fare.

[5] Filed as part of the original document.

made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, the complaints in Dockets 27925, 27929, and 27938 are hereby dismissed;

4. The investigation ordered herein be assigned before an Administrative Law Judge at a time and place hereafter to be designated; and

5. A copy of this order be filed with the aforesaid tariff and be served upon Allegheny Airlines, Inc., American Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-17523 Filed 7-3-75;8:45 am]

[Docket No. 28033, etc.; Order 75-6-150]

BOSTON-ATLANTA NONSTOP SERVICE CASE, ET AL.

Order Instituting an Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of June, 1975.

In the matter of Boston-Atlanta Nonstop Service Case (Docket No. 28033); Application of Delta Air Lines, Inc. for amendment of its certificate of public convenience and necessity (Docket No. 21939); application of Delta Air Lines, Inc. for an exemption (Docket No. 27647); and applications of United Air Lines, Inc. and Southern Airways, Inc. for amendments of their certificates of public convenience and necessity (Docket Nos. 22000, 21965).

Applications for competitive nonstop authority in the Boston-Atlanta market have been filed by Delta Air Lines,[1] Southern Airways,[2] and United Air Lines.[3] On March 24, 1975, Delta filed a motion requesting an immediate hearing on its certificate amendment application, and an application for an exemption to permit nonstop Boston-Atlanta service.

In support of its motion for expedited hearing and its exemption request, Delta alleges, inter alia, that Eastern Air Lines, the incumbent nonstop carrier in the Boston-Atlanta market, has seriously defaulted in its service obligations as evidenced by the fact that 110,000 Boston-Atlanta passengers or over 300 passengers a day utilized Deltas' one- and two-stop service in the market for the twelve-month period ended January 1975; that Delta will operate a limited pattern of three well-timed round-trip nonstop flights with DC-9-32 and B-727-200 aircraft; that passengers in the Washington-Boston and Washington-Atlanta markets will be benefited by not having to suffer the inconvenience resulting from the "blocking" of space by through Boston-Atlanta passengers; and that Delta's service will produce a $2,557,000 operating profit, and a $122,000 excess over Subpart K return and tax allowance, without undue diversion from Eastern.

Answers in support of Delta's motion for expedition and exemption request were filed by the Shreveport Chamber of Commerce and Airport Authority, the State of Maine, the City and Chamber of Commerce of Atlanta, the City of Bangor and the Greater Bangor Area Chamber of Commerce, and the Chamber of Commerce and Municipal Airport Authority of Jackson, Mississippi. The Massachusetts Port Authority and the Greater Boston Chamber of Commerce support Delta's motion to expedite and take no position on the exemption request. United supports Delta's motion to expedite and opposes the exemption request. The City of New Orleans and the Chamber of Commerce of the New Orleans Area oppose Delta's motion.[4]

Eastern filed a consolidated answer opposing Delta's motion and exemption request contending, in general, that the Boston-Atlanta market is being satisfactorily served by Eastern; that Eastern's load factors are moderate demonstrating no need for additional nonstop capacity; that Delta would provide no meaningful service benefits; that the proposed service would inflict massive diversion from Eastern totaling $7.5 million annually; that the statutory bases for an exemption have not been demonstrated; and that Delta has not met the Board's standards for a priority hearing.

Upon consideration of the foregoing pleadings and all the relevant facts, the Board has decided to institute an investigation, to be set down for immediate hearing, and to consider whether the public convenience and necessity require additional nonstop service in the Boston-Atlanta market. We will consolidate with the investigation instituted herein the applications of Delta, Southern and United in Dockets 21939, 21965, and 22000, respectively, insofar as those applications conform to the scope of this proceeding.

We have decided to deny Delta's request for exemption authority to provide nonstop Boston-Atlanta service. The pendency of competing certificate amendment applications of United and Southern for Boston-Atlanta nonstop authority would require the resolution of complex and controversial issues of carrier selection which should not be decided, in the present circumstances, until after an evidentiary hearing.[5] In addition, Delta has not demonstrated that enforcement of the certification process would be an undue burden on it or would otherwise not be in the public interest.

We have determined that the proceeding instituted herein is by its very nature not one which could lead to a "major Federal action significantly affecting the quality of the environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). In the instant case all prospective environmental effects, direct and secondary, would proceed, in the first instance, from changes in aircraft schedules and levels of service. Our conclusion in regard to the environment is largely based, therefore, upon our finding that there are unlikely to be environmentally significant changes in such schedules and service levels should additional nonstop service be authorized. In support of its motion and exemption request Delta proposes three round-trip flights in the Boston-Atlanta market. In view of the size of the Boston-Atlanta market (160,690 O&D and connecting passengers in the fiscal year 1974) and the level of existing service, it is unlikely that any other candidate for new Boston-Atlanta nonstop authority would offer a significantly greater level of service than Delta has proposed. In addition, the limited potential for increased changes in service levels must be evaluated in light of the large overall level of traffic at Boston and Atlanta. Boston is a large hub which ranked tenth among U.S. airports in air carrier passenger enplanements for fiscal year 1972. In 1973 there were 307,000 aircraft operations at Logan International Airport, with 313,000 projected for 1975 and 319,000 for 1976. Atlanta ranked third among U.S. airports in air carrier passenger enplanements in fiscal year 1972. In 1973 there were 500,000 aircraft operations at Atlanta International Airport, with 517,000 projected for 1975 and 561,000 for 1976.[6] Therefore, it would not be reasonable to conclude on the face of the matter that authorization of new nonstop service in the Atlanta-Boston market will lead to more than very minor environmental changes.

Accordingly, we are not directing our staff to undertake the preparation of an environmental assessment. Our conclusion herein is not intended to foreclose any party from presenting evidence (subject to the usual evidentiary rules in force in C.A.B. proceedings) or from making arguments with respect to relevant environmental issues. Nor is our conclusion intended to foreclose our consideration of environmetal impacts resulting from the contemplated licensing action which, although of a lesser magnitude than those required to trigger the

---

[1] Docket 21939.
[2] Docket 21965.
[3] Docket 22000.

[4] New Orleans states that if a proceeding is instituted the Board should also consider the need for additional nonstop New Orleans-Boston authority.

[5] Kodiak Airways v. CAB, 447 F. 2d 341 (D.C. Cir. 1971).

[6] Terminal Area Forecast, 1975-1985, Department of Transportation, FAA, Office of Aviation Economics, Aviation Forecast Division, July 1973, pages ix, ne 11, and GL 21. (The forecasts in this study were prepared before the energy crisis in the fall of 1973 and therefore do not reflect its impact on future activity levels.)

NEPA procedures, might nonetheless be relevant to our decision.

Accordingly, *It is ordered,* That:

1. A proceeding to be known as the Boston-Atlanta Nonstop Service Case, Docket 28033, be and it hereby is instituted and shall be set down for hearing before an Administrative Law Judge of the Board at a time and place hereafter designated;

2. The proceeding instituted by paragraph 1, above, shall include consideration of the following issues:

(a) Do the public convenience and necessity require the certification of an air carrier or air carriers to engage in competitive nonstop air transportation between Boston, Massachusetts, and Atlanta, Georgia?

(b) If the answer to (a) is in the affirmative, which air carrier(s) should be authorized to engage in such service?

(c) What conditions, if any, should be placed on the operation of such carrier(s)?

3. Any authority granted in this proceeding will be ineligible for subsidy;

4. Insofar as they conform to the scope of the proceeding set forth in paragraph (2) above, the applications of Delta Air Lines, Inc., in Docket 21939, Southern Airways, Inc., in Docket 21965, and United Air Lines, Inc., in Docket 22000, be and they hereby are consolidated with the proceeding instituted by paragraph (1), above; to the extent not consolidated, the foregoing applications be and they hereby are dismissed without prejudice;

5. The motion of Delta Air Lines for expedited hearing be and it hereby is granted;

6. The application of Delta Air Lines in Docket 27647 for an exemption be and it hereby is denied; and

7. Applications, motions to consolidate and petitions for reconsideration of this order shall be filed twenty days from the service date of this order and answers thereto shall be filed ten days thereafter.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-17524 Filed 7-3-75;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1975

Proposed Addition

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 79, of the proposed addition of the following commodities to Procurement List 1975, November 12, 1974 (39 FR 39964).

CLASS 7510

Portfolio, Double Pocket Presentation
7510-00-584-2489
7510-00-584-2490
7510-00-584-2491
7510-00-584-2492

Comments and views regarding these proposed additions may be filed with the Committee on or before August 6, 1975. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months from the date of this FEDERAL REGISTER.

By the Committee.

E. R. ALLEY, Jr.,
Deputy Director.

[FR Doc.75-17515 Filed 7-3-75;8:45 am]

PROCUREMENT LIST 1975

Addition to Procurement List; Amendment

Pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 79, the following service published as an addition in the FEDERAL REGISTER on June 30, 1975 (40 FR 27512) is amended to read as follows:

INDUSTRIAL CLASS 7349

JANITORIAL/CUSTODIAL—National Marine Fisheries Complex, Seattle, Washington (SH), for the following buildings: East Building; West Building; Central Building; Pilot Plant Building; Behavior Laboratory—Basic Service: $1,791 mo. Optional Services: $6,531 yr.

By the Committee.

E. R. ALLEY, Jr.,
Deputy Director.

[FR Doc.75-17516 Filed 7-3-75;8:45 am]

DEFENSE MANPOWER COMMISSION

CANCELLATION OF MEETING

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the meeting of the Defense Manpower Commission scheduled for July 18, 1975, is cancelled.

BRUCE PALMER, Jr.,
General USA (Ret.),
Executive Director.

[FR Doc.75-17442 Filed 7-3-75;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

GENERAL TECHNICAL ADVISORY COMMITTEE

Meeting

JUNE 27, 1975.

The General Technical Advisory Committee will hold a meeting on July 30, 1975, at the Broughton Volunteer Fire Department Hall, Cochran Mill Road, Broughton, Pennsylvania. The meeting will be open to the public and will begin at 9 a.m.

The following agenda items will be discussed:

9-9:30—Opening Statement and Introduction of Guests, Dr. Philip C. White, Assistant Administrator, Fossil Energy, ERDA

9:30-11—ERDA R&D Plan, Mr. Roger W. A. LeGassie, Assistant Administrator, Planning and Analysis, ERDA

11-12—ERDA Patent Policy, James E. Denny, Assistant General Counsel for Patents, ERDA

12-1:30—Recess for Lunch

1:30-2:30—Coal Conversion and Utilization Program, Dr. Raymond L. Zahradnik, Acting Director, Division of Coal Conversion & Utilization, ERDA

2:30-3:30—Advanced Research and Supporting Technology Program, Dr. G. Alexander Mills, Acting Director, Division of Advanced Research and Supporting Technology, ERDA

3:30-4:30—Petroleum, Natural Gas, and In Situ Technology Program, Dr. H. Neal Dunning, Acting Director, Division of Petroleum, Natural Gas, and In Situ Technology, ERDA

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items, scheduled above, the following requirements shall apply:

(a) Persons wishing to submit written statements on agenda items may do so by mailing ten copies thereof, postmarked no later than July 16, 1975.

Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Committee, who is empowered to apportion the time available among those selected by him to make oral statements.

(b) Information as to the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, can be obtained by a prepaid telephone call to Mr. George Fumich, Jr., Acting Director, Senior Staff, Office of the Assistant Administrator for Fossil Energy. Mr. Fumich's telephone number is (202) 634-6600.

(c) Questions at the meeting may be asked only by members of the Advisory Committee.

(d) Seating for the public will be made available on a first-come, first-served basis.

(e) Copies of minutes of the meeting will be made available for copying, following their acceptance by the Committee, in accordance with the Federal Advisory Committee Act, at the Energy Research and Development Administration's Public Document Room, 1717 H Street, NW., Washington, D.C. 20545, upon payment of all charges required by law.

HARRY L. PEEBLES,
Deputy Advisory Committee Management Officer.

[FR Doc.75-17466 Filed 7-3-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 394-8; OPP-33000/277]

NOTICE OF RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) pub-

lished in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by applicant will be available for examination at the Environmental Protection Agency, Room EB–31, East Tower, 401 M Street SW., Washington, D.C. 20460.

On or before September 5, 1975, any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH–569), Office of Pesticide Programs, 401 M Street SW, Washington DC 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after September 5, 1975.

Dated: June 27, 1975.

MARTIN H. ROGOFF,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED (OPP–33000/277)

EPA File Symbol 1029–RGR. Aidex Corp., 1024 N 17th St., Omaha NB 68102. VE–TEX EMULSIBLE INSECTICIDE CONCENTRATE. Active Ingredients: Dimethoate: O,O-Dimethyl S-[(Methylcarbamoyl) methyl] Phosphorodithioate 23.400%; 2,2-Dichlorovinyl Dimethyl Phosphate 1.395%; Related Compounds 0.105%; Petroleum Hydrocarbons 31.869%. Method of Support: Application proceeds under 2(c) of interim policy. PM13

EPA File Symbol 241–EGG. American Cyanamid Co., Agricultural Div., PO Box 400, Princeton NJ 08540. CYGON 400 SYSTEMIC INSECTICIDE. Active Ingredients: Dimethoate (0,0-dimethyl S-(N-methylcarbamoylmethyl) phosphorodithioate) 43.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added Claims. PM16

EPA Reg. No. 18533–11. Ashland Oil Inc., 5200 Blazer Parkway, Dublin OH 43017. TECHNICAL COPPER 8-QUINOLINOLATE. Active Ingredients: Copper 8-Quinolinolate 90%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Added use PM22

EPA File Symbol 551–EGO. Baird & McGuire, Inc., South St., Holbrook MA 02343. BAIRD'S VEGETATION KILLER. Active Ingredients: Prometon: 2,4-bis (isopropylamino)-6-methoxy-*s*-triazine 3.73%; Petroleum distillate 81.04%. Method of Support: Application proceeds under 2(c) of interim policy. PM25

EPA File Symbol 6754–TR. Dettelbach Pesticide Corp., 4111 Peachtree Rd., NE, Atlanta GA 303019. PROFESSIONAL 5% MALATHION DUST. Active Ingredients: Malathion (0,0-dimethyl dithiophosphate of diethyl mercaptosuccinate) 5%. Method of Support: Application proceeds under 2(c) of interim policy. PM16

EPA File Symbol 6754–TN. Dettelbach Pesticide Corp. PROFESSIONAL SEVIN 10 DUST. Active Ingredients: Carbaryl (1-naphthyl 6-methylcarbamate) 10.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM12

EPA File Symbol 6754–TE. Dettelbach Pesticide Corp. PROFESSIONAL ORKIN-AID GRANULES. Active Ingredients: 0,0-diethyl 0- (2-isopropyl-6-methyl - 4 - pyrimidinyl) phosporothioate 2%. Method of Support: Application proceeds under 2(c) of interim policy. PM15

EPA File Symbol 6754–AO. Dettelbach Pesticide Corp. PROFESSIONAL ORKINBAN GRANULES. Active Ingredients: Chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate] 0.5%. Method of Support: Application proceeds under 2 (c) of interim policy. PM12

EPA File Symbol 270–RRU. Farnam Co., Inc., PO Box 21447, Phoenix AZ 85036. FARNAM SX—800 FLY KILLER. Active Ingredients: Dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate 0.508%; related compounds 0.01%; (Z)-9-Tricosene 0.048%; related compounds 0.002%. Method of Support: Application proceeds under 2(b) of interim policy. PM16

EPA File Symbol 1021–RGAU. McLaughlin Gormley King Co., 8810 10th Ave., N, Minneapolis MN 55427. PYROCIDE INTERMEDIATE 7256. Active Ingredients: Pyrethrins 5.00%; Piperonyl butoxide, technical 25.00%; Di-n-propyl isocinchomeronate 20.00%; Petroleum distillate 50.00%. Method of Support: Application proceeds under 2(c) of interim policy. PM17

EPA File Symbol 36480–G. Macco, PO Box 598, Middletown OH 45042. DINITRO TECHNICAL. Active Ingredients: 2-sec-Butyl-4,6-dinitrophenol 90.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM25

EPA File Symbol 6020–RG. Mom Chem. Co., 7775 NW 66th St., Miami FL 33166. X–CELL RD–10. Active Ingredients: Alkyl (C14 50%, C12 40%, C16 10%) dimethylbenzyl ammonium chloride 10.00%; Ethanol 2.50%. Method of Support: Application proceeds under 2(c) of interim policy. PM31

EPA Reg. No. 524–285. Monsanto Co., Agricultural Div., 800 N Lindbergh Ave., St. Louis MO 63166. LASSO. Active Ingredients: Alachlor 43.0%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Added use. PM25

EPA File Symbol 524–GRI. Monsanto Co., Agricultural Prod., 800 N Lindbergh Ave., St. Louis MO 63166. MON 0139 TECHNICAL SOLUTION. Active Ingredients: Isopropylamine salt of Glyphosate 53.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA Reg. No. 7001–157. Occidental Chem. Co., Div. of Occidental Petroleum Corp., PO Box 198, Lathrop CA 95330. BEST TURF DISEASE CONTROL. Active Ingredients: Chlorothalonil (tetrachloroisophthalonitrile) 2.5%. Method of Support: Application proceeds under 2(c) of interim policy. PM21

EPA File Symbol 11715–LR. Speer Products, Inc., PO Box 9383, Memphis TN 38109. SPEER INSECTICIDE DIAZINON EMULSIFIABLE CONCENTRATE. Active Ingredients: 0,0 - diethyl 0 - (2 - isopropyl-6-methyl - 4 - pyrimidinyl) phosphorothioate 47.18%; Aromatic petroleum derivative 30.03%. Method of Support: Application proceeds under 2(c) of interim policy. PM15

EPA File Symbol 3238–TU. Standard Spray and Chem. Co., PO Box 63, Lakeland FL 33802. STANDARD BRAND BASIC COPPER "53". Active Ingredients: Copper Sulfate 53.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM22

EPA File Symbol 148–REEL. Thompson Hayward Chem. Co., PO Box 2383, Kansas City KS 66110. TRICHLOROFON TECHNICAL. Active Ingredients: Trichlorofon: Dimethyl (2,2,2-trichloro - 1 - hydroxy ethyl) phosphonate 97.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM16

EPA File Symbol 148–REEU. Thompson Hayward Chem. Co., PO Box 2382, Kansas City KS 66110. TRICHLORFON LIQUID SOLUTION INSECTICIDE. Active Ingredients: Dimethyl (2,2,2-trichloro-1-hydroxyethyl) phosphonate 40.5%. Method of Support: Application proceeds under 2(c) of interim policy. PM16

[FR Doc.75–17428 Filed 7–3–75;8:45 am]

[FRL 395–5]

CONTROL OF POLLUTANTS IN NAVIGABLE WATERS BY THE STATE OF NEVADA

Notice of Public Hearing and Request for State Program Approval

The State of Nevada has submitted a request for approval of its program to control discharges of pollutants to navigable waters under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (the Act), 33 U.S.C. Section 1342(b).

A public hearing to consider this request will be held on August 6, 1975, at the Nevada State Legislative Building, Room 231, 401 S. Carson Street, Carson City, Nevada, starting at 1:30 and 7:00 p.m.

The hearing panel will consist of the Environmental Protection Agency Administrator, who will serve as the Presiding Officer, the Chief of the Nevada Bureau of Environmental Health, and the Environmental Protection Agency Regional Administrator, Region IX, or their representatives.

Section 402(b) of the Act provides that the Governor of a State desiring to administer the National Pollutant Discharge Elimination System (NPDES) permit program to control discharges into navigable waters within its jurisdiction may submit to the Administrator of

the United States Environmental Protection Agency (EPA) a full and complete description of the program the State intends to administer, including a statement from the State's Attorney General that its laws provide adequate authority to carry out the program described. The Administrator is required to approve each such submitted program unless it does not meet the requirements of Section 402(b) and EPA's guidelines. To administer the NPDES program the State must have the authority, among others, to: (1) Issue permits which comply with all pertinent requirements of the Act, (2) abate violations of permits, including civil and criminal penalties, and (3) ensure that the Administrator, the public, and any affected States and agencies are given notice of and opportunity for a public hearing with regard to each permit application. The State must also have and commit itself to use manpower and resources sufficient to carry out the program described in the program description pursuant to Section 402(b) and the procedures contained therein. EPA's guidelines establishing State Program Elements Necessary for Participation in the NPDES program were published in Volume 37 of the FEDERAL REGISTER, December 22, 1972 (40 CFR Part 124), beginning on page 28390.

The State of Nevada proposes that the Nevada Department of Human Resources, Bureau of Environmental Health, Capital Complex, 1209 Johnson Street, Carson City, Nevada 89707, (area code (702) 885–4670), operate this program for control of discharges into navigable waters of the State in compliance with the Act. The chief officials are Michael O'Callaghan, Governor of Nevada, Roger Trounday, Director, Department of Human Resources, and Ernest Gregory, Chief, Nevada Bureau of Environmental Health.

This request and program description may be inspected by the public at the offices of the Nevada Bureau of Environmental Health at the above address, or at the United States Environmental Protection Agency, Region IX, 100 California Street, San Francisco, California 94111, (area code (415) 556–3450).

All interested persons wishing to comment upon the State's request or its program submission are invited to appear at the public hearing to present their views. Written comments may be presented at the hearing or submitted by August 13, 1975, either in person or by mail, to the Environmental Protection Agency, Region IX, at the previously mentioned address.

Oral statements will be received and considered, but for the accuracy of the record, all testimony should be submitted in writing. Statements should summarize extensive written material so that there will be time for all interested persons to be heard. Persons submitting written statements are encouraged to furnish additional copies for the use of the hearing panel and other interested persons. The Presiding Officer may, at his discretion, exclude oral testimony if it is overly repetitious or irrelevant to the decision to approve or require revision to the State program as submitted.

All comments received by August 13, 1975, or presented at the public hearing will be considered by the Environmental Protection Agency in taking final action on Nevada's request for State program approval.

Please bring the foregoing to the attention of persons whom you know would be interested.

ROBERT L. BAUM,
Acting Assistant Administrator for Enforcement.

JULY 1, 1975.

[FR Doc.75–17546 Filed 7–3–75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20494; FCC 75–615]

SUPERIOR COMMUNICATIONS CO., INC.

Revocation of Licenses; Order To Show Cause

In the matter of revocation of the licenses of Superior Communications Co., Inc., licensee of stations KAQ73, KAQ74, and KAQ75, licensed in the Point to Point Microwave Radio Service.

1. The Commission has before it for consideration the outstanding licenses of the captioned licensee, Superior Communications Co., Inc. (Superior), for point-to-point microwave radio stations KAQ73, KAQ74, and KAQ75, all in the state of Minnesota. These stations are used to relay various broadcast television signals received off the air in north central Minneosta to International TV Cable Corporation (ITVCC), a cable system located in International Falls, Minnesota and to Norwont Ltd., a cable system in Fort Frances, Ontario. On September 3, 1974, an application was filed for assignment of licenses from Superior to ITVCC (File No. 679–CF–T/C(3)–75). On February 12, 1975, counsel for Superior requested that the application be dismissed.

2. Information supplied by Superior in its application for assignment of licenses raises the following questions:

a. Whether, in light of all the facts and circumstances pertaining thereto, the licenses for Stations KAQ73, KAQ74, and KAQ75 were transferred, assigned or disposed of during the period of 1968–1974, by transfer of control of the licensee corporation or otherwise, without a finding by the Commission that the public interest, convenience and necessity would be served thereby, in violation of Section 310(d) of the Communications Act of 1934, as amended;

b. Did Superior's 1971 renewal applications (File Nos. 1710 through 1712–C1–R–71) contain misrepresentations to the Commission or a lack of candor as to the true ownership of the licensee and did it misrepresent its relationship to ITVCC on its Annual Report FCC Form P for the calendar years between 1968 and 1974; and

c. Whether, in light of the information giving rise to the preceding questions, if found to be true, the principals of Superior possess the requisite qualifications to continue as a licensee of the Commission?

3. Information relating to the above questions has come to the attention of the Commission since grant of the renewal of Superior's licenses. This information, if substantiated, could warrant revocation of the licenses.

4. Accordingly, *it is ordered,* That pursuant to the provisions of section 312 (a) (4) of the Communications Act, Superior Communications Company, Inc., is directed to show cause why an Order revoking its licenses should not be issued by appearing at a hearing to be held at a place to be specified and before a judge to be designated in a subsequent order, upon the following issues:

a. To determine the actual facts involving the control of Superior Communications Company, Inc., including any contracts involving ownership of its stock and any changes in control of its operations, the events surrounding these facts, and the identity, responsibility and culpability, if any, of the parties involved therein, during the time period from June of 1968 until the present;

b. To determine if there were any unauthorized transfers of control, de jure or de facto, of Superior Communications Company, Inc., during the period from June 24, 1968 to the present in violation of Section 310(d) of the Act; and

c. To determine if there were any misrepresentations by Superior in its 1971 renewal applications and its annual reports (FCC Form P) for the years between 1968 and 1974.

5. *It is further ordered,* That Elizabeth A. Caswell, Frederick H. Walter, John L. Koenreich, Harry Davey, James E. Preece and the Chief, Common Carrier Bureau are made parties to this proceeding.

6. *It is further ordered,* That the Chief of the Common Carrier Bureau is directed to serve upon Superior a Bill of Particulars regarding the matters referred to in questions (a) through (c) inclusive set out in paragraph two, within thirty (30) days of the release of this Order.

7. *It is further ordered,* That to avail itself of the opportunity to be heard, the licensee and other parties listed in paragraph 5, *supra,* pursuant to § 1.91(c) of the Commission's rules, in person or by attorney, shall file with the Commission within thirty days of the receipt of the Order to Show Cause a written appearance stating that they will appear at the hearing and present evidence on the matters specified in the Order. If the licensee or principals thereof fail to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. (See § 1.92(a) of the Commission's rules.) Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the Order to Show Cause. (See § 1.92 (b) of the Commission's rules.) In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will termi-

nate the hearing proceeding and certify the case to the Commission. Thereupon, the matter will be determined by the Commission in the regular course of business and an appropriate Order will be entered. (See §§ 1.92 (c) and (d) of the Commission's rules.)

8. *It is further ordered,* That the Secretary of the Commission send a copy of this Order by Certified Mail-Return Receipt Requested to Superior Communications and the other parties listed in paragraph 5, supra.

Adopted: May 28, 1975.

Released: June 6, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-17499 Filed 7-3-75;8:45 am]

[Report No. 760]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

JUNE 30, 1975.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's Rules, an application, in order to be considered with any domestic public radio services application appearing on the attached list, must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cut-off dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60 day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to Section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATION ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

21777-CD-P-75, Portable Communications, Inc. (Resubmitted) (KEK289), C.P. for additional facilities operating on 454.350 MHz at Loc. #3, #1 Marine Midland Center, Buffalo, New York.

21778-CD-P-75, Rural Telephone Service Company, Inc. (New), C.P. for a new station to operate on 152.60 MHz to be located ¾ mile South of Grainfield on Hwy. K-23, Grainfield, Kansas.

21779-CD-P-(2)-75, The Diamond State Telephone Company (KGA471), C.P. to change antenna system operating on 152.57 and 152.78 MHz located at 919 Market Street, Wilmington, Delaware.

21780-CD-P-(4)-75, South Central Bell Telephone Company (KKI454), C.P. for additional facilities operating on 454.425 and 454.475 MHz at intersection of Boundary Road and Intracoastal Canal, Houma, Louisiana and change antenna system and replace transmitter at same location.

21781-CD-P-75, B and C. Mobile Communication, Inc. (KUO572), C.P. to relocate facilities operating on 152.03 MHz, 3 miles South on U.S. 287, and 0.7 mile East, Lamar, Colorado.

21782-CD-AL-75, (KUD204), Robert J. Bennett d/b as Bennett Radio Paging Service, Consent to Assignment of License from Robert J. Bennett d/b as Bennett Radio Paging Service Assignor to Harbor Communication, Inc. Assignee.

21783-CD-P-75, Sweetser Rural Telephone Company, Inc. (New), C.P. for a new-one way station operating on 158.10 MHz to be located 206 North Main Street, Sweetser, Indiana.

21784-CD-P-75, Memphis Mobile Telephone, Inc. (New), C.P. for a new station operating on 454.05, 454.125, 454.175, and 454.-225 MHz to be located 400 South Highland Street, Memphis, Tennessee.

21785-CD-P-75, The Monrovia Telephone Corporation (New), C.P. for a new station operating on 454.650 MHz. to be located 1617 N. Broadway, Atlanta, Indiana.

21786-CD-P-75, The Monrovia Telephone Corporation (New), C.P. for a new station operating on 454.625 MHz to be located 26 Main and Walnut, Monrovia, Indiana.

21787-CD-P-(3)-75, Vernon H. Johnson (KKT397), C.P. to relocate facilities operating on 454.100, 454.200, and 454.300 MHz at Loc. #2, 800 Airport Road, Milan, New Mexico.

21789-CD-P-(3)-75, General Communications Service, Inc. (KOH280), C.P. for additional Standby facilities to operating on 152.24 and 158.70 MHz at Loc. #1.

21790-CD-P-75, General Communications Service, Inc. (KOA265), C.P. for additional Control facilities to operate on 2112.0 MHz at Loc. #3, located at 365 N. 6th Avenue Phoenix, Arizona and Repeater facilities to operate on 2162.0 MHz located atop of South Mountain, 7.5 miles South of Phoenix, Arizona.

21791-CD-P-75, King Communications, Inc. (KSV935), C.P. to relocate facilities operating on 152.24 MHz and replace transmitter located ¼ mile East U.S. 10 on Wheeler Road, Midland, Michigan.

21792-CD-P-(2)-75, Northwestern Bell Telephone Company (KAA812), C.P. for additional Test facilities to operate on 459.450, 459.475, 459.525, 459.550 Mhz located at 118 South 19th Street, Omaha, Nebraska.

21794-CD-P-(2)-75, Business Communications, Inc. (KKA400), C.P. for additional facilities to operate on 459.025 and 459.300 Mhz located 700 Poydras Street, New Orleans, Louisiana and change control point to transmitter location.

21795-CD-P-75, (Resubmitter), Portable Communications, Inc. (New), C.P. for a new one-way station to operate on 43.58 Mhz located #1 Marine Midland Center, Buffalo, New York.

Major amendment

3854-C2-P-73, Mobilephone-Paging Radio Corporation, Fall River, Massachusetts (New). Amend to change Base Frequency 152.15 MHz to 454.350 MHz and Mobile frequency 158.61 MHz to 459.350 MHz. All other particulars are to remain as reported on PN #625 dated December 4, 1972.

RURAL RADIO

60376-CR-P-75, The Mountain States Telephone and Telegraph Co., (New), C.P. for a new rural Subscriber station to operate on 157.98 MHz to be located .1 mile South of Lysite, Wyoming.

60377-CR-P-75, The Mountain States Telephone and Telegraph Co., (New), C.P. for a new rural Subscriber station to operate on 157.77 MHz to be located .48 mile Northeast of Casper, Wyoming.

POINT-TO-POINT MICROWAVE RADIO SERVICE

The following renewal applications for the term ending August 1, 1980 have been received.

PACIFIC NORTHWEST BELL TELEPHONE COMPANY

Call Sign	*Location*
KKU58	Pelton Dam, Oreg.
KKU71	Ephrata, Wash.
KOA69	McMinniville, Oreg.
KOA95	Pine Mountain, Oreg.
KOA98	Lewiston, Idaho
KOA99	Peola, Wash.
KOC65	Portland, Oreg.
KOC66	Kalama, Wash.
KOC67	Castle Rock, Wash.
KOC68	Tenino, Wash.
KOC69	Orting, Wash.
KOE81	Seattle, Wash.
KOJ87	Blyn, Wash.
KOJ91	Yakima, Wash.
KOJ92	Bluelight Hill, Wash.
KOJ93	Joe Butte, Wash.
KOJ94	Clyde, Wash.
KOJ95	Benge, Wash.
KOJ96	Sprague, Wash.
KOM52	Brown's Mountain, Wash.
KOM53	Spokane, Wash.
KON65	Eugene, Oreg.
KON66	Mary's Peak, Oreg.
KON67	Canary Hill, Oreg.
KOP48	Othello, Wash.
KOP49	Prospect Hill, Oreg.
KOP50	Mt. Hebo, Oreg.
KOP51	Tillamook, Oreg.
KOQ78	The Dalles, Oreg.
KOQ79	Wishram, Wash.
KOQ80	Condon, Oreg.
KOQ86	Skamania, Wash.
KOQ87	Hood River, Oreg.
KOQ88	Moro, Oreg.
KOQ89	Roosevelt, Wash.
KOQ90	Irrigon, Oreg.

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, regulations and other requirements.

[2] The above alternative cut-off rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the Rules).

Call Sign	Location
KOR60	Siskiyou, Oreg.
KOR61	Baldy, Oreg.
KOR62	King Mountain, Oreg.
KOR63	Mt. Nebo, Oreg.
KOR64	Harness Mountain, Oreg.
KOR65	Blanton Hill, Oreg.

POINT TO POINT MICROWAVE RADIO SERVICE

The following renewal applications for the term ending August 1, 1980 have been received.

PACIFIC NORTHWEST BELL TELEPHONE COMPANY

Call Sign	Location
KOR66	Peterson Butte, Oreg.
KOS28	Silverton, Oreg.
KOS29	Oregon City, Oreg.
KOT50	Rattlesnake Ledge, Wash.
KOT51	Bald Hill, Wash.
KOU54	Highland Butte, Oreg.
KOU55	Livingston Mountain, Wash.
KOY41	Devil's Mountain, Wash.
KOY42	Lookout Mountain, Wash.
KOY70	Rieth, Oreg.
KOY71	Pendleton, Oreg.
KPB48	Medford, Oreg.
KPB49	Chestnut, Oreg.
KPB50	Haymaker, Oreg.
KPB60	Angeles Point, Wash.
KPC61	Prospect Hill #2, Oreg.
KPC63	Roseburg, Oreg.
KPC64	Kenyon Mountain, Oreg.
KPE26	Hyak, Wash.
KPE27	Cle Elum, Wash.
KPE28	Kittitas, Wash.
KPE29	Moses Lake, Wash.
KPE30	Ritzville, Wash.
KPG66	McChord AFB, Wash.
KPG74	Bellingham, Wash.
KPG85	John Day, Oreg.
KPG86	Elkhorn, Oreg.
KPG87	Auburn, Oreg.
KPG88	Baker, Oreg.
KPR25	Blue River, Oreg.
KPR26	Carmen-Smith, Oreg.
KPR42	Red Butte, Oreg.
KPR64	Washington, Oregon, and Northern Idaho.
KPS92	Pasco, Wash.
KPT52	Chelan, Wash.
KPT53	Brewster, Wash.
KPT54	Omak, Wash.
KPT55	Tonasket, Wash.
KPT56	Pateros, Wash.
KPT57	Oroville, Wash.
KPV53	Friday Harbor, Wash.
KPV72	Eastsound, Wash.
KPV81	Newport, Oreg.
KPV82	Corvallis, Oreg.
KPV86	Colfax, Wash.
KPY93	Eastsound, Wash.
KPY94	Blakely Island, Wash.
KPZ26	Grass Valley, Oreg.
KPZ27	Boring, Oreg.
KPZ28	Mount Hood, Oreg.
KPZ29	Pine Grove, Oreg.
KPZ30	Maupin, Oreg.
KPZ31	Antelope, Oreg.
KPZ32	Mitchell, Oreg.
KPZ33	Dayville, Oreg.
KPZ34	John Day, Oreg.
KPZ35	Elkhorn, Oreg.
KPZ36	Brogan, Oreg.
KPZ37	Vale, Oreg.
KPZ38	Wymer, Wash.
KPZ39	Aberdeen, Wash.
KPZ54	Auburn, Wash.
KPZ55	Tacoma, Wash.
KPZ75	Bend, Oreg.
KTF22	Malin, Oreg.
KTF26	White Pass, Wash.
KTF27	Ocean Shores, Wash.
KTF28	Saddle Hill, Wash.
KTF29	Pacific Beach, Wash.
KTF30	Humptulips, Wash.
KTF82	Olympia, Wash.
KTF83	Tumwater, Wash.
KTF99	Klamath Falls, Oreg.
KTR36	Alvord Lake, Oreg.
KTR37	Jack, Oreg.
KTR38	Harney, Oreg.
KTR39	Pinecreek, Oreg.
KYR88	Cottonwood, Idaho
KYR93	Astoria, Oreg.
KYS61	Seattle, Wash.
KYS62	Seattle, Wash.
KYS63	Gold Mountain, Wash.
KYS64	Kamilche, Wash.
KYS65	Minot Peak, Wash.
KYS66	Lebam, Wash.
KYS67	Nicolai Ridge, Oreg.
KYS68	Saddle Mountain, Oreg.
KYS69	Sentinel Hill, Portland, Oreg.
KYS70	Amity, Oreg.
KYS71	Salem, Oreg.
KYS72	Mt. Horeb, Oreg.
KYS73	Hoodoo Butte, Oreg.
KYS74	Long Butte, Oreg.
KYS75	Spring River, Oreg.
KYS76	Crescent Butte, Oreg.
KYS77	Welch Butte, Oreg.
KYS78	Cave Mountain, Oreg.
KYS79	Medicine Mountain, Oreg.
KYS80	Brady Butte, Oreg.
KZS82	Bremerton, Wash.
WAH556	Boardman, Oreg.
WAN29	Quinault, Wash.
WAY59	Colville, Wash.
WAY60	Orient, Wash.
WBP34	Mt. Pisgah, Oreg.
WBP35	Oakridge, Oreg.
WGI43	Bly, Oreg.
WGI73	Mica Peak AFB, Wash.
WJK77	Walla Walla, Wash.
WJK80	Odessa, Wash.
WJM83	Kamiak Butte, Wash.
WKS39	Round Butte, Oreg.
WOF66	Lexington, Oreg.

The following renewal applications for the term ending August 1, 1980 have been received.

NEW JERSEY BELL TELEPHONE COMPANY

Call Sign	Station Location
KEA69	Rochelle Park.
KEB35	Any Temporary Fixed Location within the Territory of the grantee.
KEK94	Paterson.
KEK95	Wayne Township.
KEK96	Morristown.
KEK97	West Orange.
KEK98	Newark.
KEK99	Martinsville.
KEL20	New Brunswick.
KEL21	Clarksburg.
KEL22	Asbury Park West.
KEL23	Asbury Park.
KEL24	Trenton.
KEL50	Whiting.
KEL51	Jenkins.
KEL52	Port Republic.
KEL53	Atlantic City.
KEL54	Medford.
KEL55	Camden.
KEL81	Englewood Cliffs.
KEL92	Brigantine.
KEL93	Beach Haven.
KEM39	Washington.
KEM40	Netcong.
KEM41	Oxford.
KOA46	Paterson.
KYC66	Cedar Brook.
KYC67	Washington Township.
KYS27	New Brunswick.
KYS28	Sayreville.
KYS29	Navesink.
KYZ97	Wildwood.
KYZ98	Petersburg.
WHT85	Hamilton.
WJL20	Pompton Lakes.
WPY24	Cedar Knolls.
WPY25	Buttonwood Corners.
KEM60	Manahawkin.
KA9443	Local Television Transmission. Mobile TV pickup.

The following renewal applications for the term ending August 1, 1980 have been received.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND

Call sign	Location
KG165	Fort George G. Meade, Md.
KGO34	Crisfield, Md.
KGO35	Ewell, Smith Island, Md.
KGO71	Swanton, Md.
KXR66	Baltimore, Md.
WAD23	Owings Mills, Md.
WAD24	Baltimore, Md.
WAD25	Arnold, Md.
WAD26	Wye Mills, Md.
WAD27	Federalsburg, Md.
WAD28	Salisbury, Md.
WAX85	Randallstown, Md.
WIV26	Monrovia, Md.
WIV27	Lambs Knoll, Md.
WIV50	Fairview Mountain, Md.
WIV51	Hagerstown, Md.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY

Call sign	Location
KGC79	Washington, D.C. and vicinity.
KGI64	Washington, D.C.

4572-CF-P-75, The Mountain States Telephone and Telegraph Company (KPY70), Bill Williams Mountain, 3.5 miles SW of Williams, Arizona. Lat. 35°12'01''N. Long. 112°12'16''W. C.P. to add antenna system and change location, and add frequency 2112.0H MHz toward a new point of communication at Seligman, Arizona on via Passive Reflector on azimuth 46°59'.

4573-CF-P-75, Same (WIV25), Mormon Mountain, 17.8 Miles SE of Flagstaff, Arizona. Lat. 34°58'08''N. Long. 111°30'25''W. C.P. to add antenna system and frequencies 10875V, 11115V MHz toward Flagstaff, Arizona on azimuth 333°07', and 2175.6H MHz toward a new point of communication at Sunshine, Arizona on azimuth 68°37'.

4574-CF-P-75 Same (New), 217 North 1st Avenue, Seligman, Arizona. Lat. 35°19'40''N. Long. 112°52'29''W. C.P. for a new station on frequency 2162.0H MHz toward Bill Williams Mountain, Arizona via Passive Reflector on azimuth 101°59'.

4575-CF-P-75, Same (KPC67), 24 West Aspen Street, Flagstaff, Arizona. Lat. 35°11'57''N. Long. 111°38'57''W. C.P. to add frequencies 11565V and 11325V MHz toward Mormon Mountain, Arizona on azimuth 153°03'.

4576-CF-P-75, Same (New), 0.55 Mile SSW of Sunshine, Arizona. Lat. 35°07'12''N. Long. 111°02'04''W. C.P. for a new station on frequency 2125.6H MHz toward Mormon Mountain, Arizona on azimuth 248°53'.

4577-CF-ML-75, American Telephone and Telegraph Company (KYZ91), 4.9 Miles NW of Roanoke, Texas. Lat. 33°01'43''N. Long. 97°18'05''W. Mod. of License to change polarity from Vertical to Horizontal on frequencies 3750, 3830, 3910, 3990, 4070, and 4150 MHz, from Horizontal to Vertical on 3770 MHz toward Grapevine, Texas on azimuth 115°04'.

4578–CF–ML–75, Same (KKK92), 4.8 Miles ESE of Grapevine, Texas. Lat. 32°54'44''N. Long. 97°00'26''W. Mod. of License to change polarity from Vertical to Horizontal on frequencies 3710, 3790, 3870, 3950, 4030, and 4110 MHz, and from Horizontal to Vertical on 3730 MHz toward Roanoke, Texas on azimuth 295°14'.

4580–CF–R–75, General Telephone Company of Ohio (KQO83), Medina, Ohio. Application for Renewal of Radio Station License expiring August 1, 1975. Term: August 1, 1975 to February 1, 1976.

4650–CF–ML–75, American Telephone and Telegraph Company (KNK96), 1.2 Miles WNW of Lodi, California. Lat. 38°08'31''N. Long. 121°18'58''W. Mod. of License to change polarity from Horizontal to Vertical on frequencies 3710, 3790, 3870, 3950, 4030, and 4110; from Vertical to Horizontal on 3730, 3810, 3890, 3970, 4050, and 4130 MHz toward Ben Bolt, California on azimuth 27°11'.

4651–CF–ML–75, American Telephone and Telegraph Company (KNK95), Ben Bolt, 3 Miles NW of Latrobe, California. Lat. 38°-35'17'' N. Long. 121°01'26'' W. Mod. of License to change polarity form Horizontal to Vertical on frequencies 3750, 3830, 3910, 3990, 4070, and 4150, from Vertical to Horizontal on 3770, 3850, 3930, 4010, 4090, and 4170 MHz toward Lodi, California on azimuth 207°22'.

4655–CF–P–75, Lafourche Telephone Company, Inc. (KKM30), Larose, 1 Block West of Hwy. #78, south edge of town, Louisiana. Lat. 29°34'03'' N. Long. 90°22'43'' W. C.P. to add frequency 2167.2V MHz toward a new point of communication at Bully Camp Oil & Gas Field, Louisiana on azimuth 182°52'.

4656–CF–P–75, Same (New) Bully Camp Oil & Gas Field, 7 Miles South of Larose, Louisiana. Lat. 29°27'22'' N. Long. 90°23'06'' W. C.P. for a new station on frequency 2117.2V MHz toward Larose, Louisiana on azimuth 02°52'.

4647–CF–P–75, Pacific Northwest Bell Telephone Company (New), 406 Laurel Street, Port Angeles, Washington. Lat. 48°06'59'' N. Long. 123°26'07'' W. C.P. for a new station on frequencies 11325V and 11485V MHz via Passive Reflector toward Angeles Point, Washington on azimuth 319°47'.

4671–CF–P–75, Same (KPB60), Angeles Point, 4 Miles West of Port Angeles, Washington. Lat. 48°08'36'' N. Long. 123°32'18'' W. C.P. to add frequencies 10875V and 11035V MHz via Passive Reflector toward a new point of communication at Port Angeles, Washington on azimuth 355°25'.

MCI–New York West, Inc. Consent of Assignment of Radio Station Construction Permit and License from MCI–New York West, Inc., Assignor, to MCI Telecommunications, Assignee, for station WLI–71, Chicago, Illinois and WAU–227, Chicago, Illinois.

Corrections

4334–CF–P–75, MCI Telecommunications Corporation (WIU91), Correct File Number to read 4532–CF–P–75.

4271–CF–P–75, Microwave Transmission Corporation (KPR33), Mission Ridge, 11.0 Miles SSW of Wenatchee, Washington. Lat. 47°16'27'' N. Long. 120°24'18'' W. C.P. to add 6226.9V MHz, 6345.5V MHz, 6375.2H MHz and 6404.8V MHz toward a new point of communication at Wahatis Park, Washington, on azimuth 128°31'.

4272–CF–P–75, Same (New), Wahatis Peak, 5.0 Miles West of Corfu, Washington, Lat. 46°48'24'' N. Long. 119°33'20'' W. C.P. for a new station on 5997.1V MHz, 6115.7V MHz and 6145.3H MHz toward Joe Butte, Washington; & 5997.1H MHz and 6026.7V MHz toward Beezley Hill, Washington, on azimuths 157°09' and 356°35', respectively. (Note: Waiver of 21.701(i) requested by Microwave Transmission Corporation).

4581–CF–P–75, United Wehco, Inc. (KEV59), 1.9 Miles NW of Camden, Arkansas. Lat. 33°36'06'' N. Long. 92°51'31'' W. C.P. to add 6226.9V MHz and 6286.2V MHz toward a new point of communication at Magnolia, Arkansas, on azimuth 223°19'. (Note: Waiver of 21.701(i) requested by United Wehco, Inc.).

4402–CF–P–75, Maine Microwave, Inc. (New), 1.5 Miles SSW of Madawaska, Maine. Lat. 47°19'47'' N. Long. 68°20'56'' W. C.P. for a new station on 11425.0H MHz and 11585.0H MHz toward Ft. Kent, Maine, on azimuth 240°28'.

4269–CF–P–75, Microwave Transmission Corporation (KVH57), San Bruno Mtn., 0.5 Mile East of Daly City, California. Lat. 37°-41'42'' N. Long. 122°26'50'' W. C.P. to add 11225V MHz, 11465V MHz, and 11625V MHz toward a new point of communication at Vollmer Peak, California, on azimuth 43°-23'.

4270–CF–P–75, Same (KNL31), Fremont Peak, 6.5 Miles South of San Juan Bautista, California. Lat. 36°45'20'' N. Long. 121°30'00'' W. C.P. to add 5967.5V MHz, 5997.1H MHz, 6026.7V MHz, 6056.4H MHz, and 6115.7V MHz toward a new point of Communication at Seaside, California, on azimuth 243°55'.

4403–CF–P–75, Eastern Microwave, Inc. (WAN75), Barber Hill, 1.0 Mile ESE of Gardner, Massachusetts. Lat. 42°33'33'' N. Long. 71°57'50'' W. C.P. to power split existing frequencies (10975.0H MHz and 10815.0H MHz) toward Paxton, Massachusetts, on azimuth 169°07'.

4404–CF–P–75, Same (New), Atop Asnebumskit Hill, Paxton, Mass. Lat. 42°18'-10'' N. Long. 71°53'51'' W. C.P. for a new station on 11385.0H MHz and 11305.0H MHz toward Worcester, Massachusetts, on azimuth 170°54'.

4562–CF–P–75, Western Tele-Communications, Inc. (KPR99), 3.5 Miles NE of Sarpy, Montana. Lat. 45°50'27'' N. Long. 106°54'-39'' W. C.P. to add 6301.0V MHz, 6330.7H MHz, 6360.3V MHz and 6390.0H MHz toward a new point of communication at Forsyth, Montana, on azimuth 17°23'.

4552–CF–P–75, Eastern Microwave, Inc. (KEM58) Helderberg, Mtn., 1.75 Miles NW of New Salem, New York. Lat. 42°38'12'' N. Long. 73°59'45'' W. C.P. to add 6271.4V MHz toward Saratoga Springs, New York, on azimuth 18°01'.

4553–CF–P–75, Same. (KEM58) Helderberg Mtn., 1.75 Miles NW of New Salem, New York. Lat. 42°38'12'' N. Long. 73°59'45'' W. C.P. change antenna system and change azimuth toward Saratoga Springs, New New York to 18°01' on frequencies 6182.4H MHz, 6241.7H MHz and 6301.0H MHz.

4560–CF–P–75, Same. (KEM58) Helderberg Mtn., 1.75 Miles NW of New Salem, New York. C.P. to add 6212.0V MHz via power split toward Black Spruce, New York, on azimuth 12°07'.

4561–CF–P–75, Same. (KEM58) Helderberg Mtn., 1.75 Miles NW of New Salem, New York. C.P. to add 6212.0V MHz via power split toward Saratoga Springs, New York, on azimuth 18°01'.

Major amendments

303–CF–P–75, Microwave Transmission Corporation (New) Monument Peak, 4.5 Miles NNE of Milpitas, California. Lat. 37°29'07'' N. Long. 121°51'57'' W. Application amended (a) to add 11545V MHz and 11585H MHz toward Bald Ridge, California, on azimuth 164°56' (b) to add 11405V MHz toward new point of communication at Stockton, California, on azimuth 41°34' and (c) to add 11505H MHz toward new point of communication at Vollmer Peak, California, on azimuth 324°50'.

304–CF–P–75, Same. (New) Bald Ridge, 5.0 Miles NE of Watsonville, California. Lat. 36°58'00'' N. Long. 121°41'31'' W. Application amended (a) to add 10735V MHz, 10855H MHz, 10895V MHz, 10935H MHz and 11095H MHz toward Salinas; Monterey; Watsonville; and Capitola; all in California, on azimuth 173°03'; 198°46; 234°46'; and 274°38', respectively; and (b) to add 11015H MHz toward new point of communication at Monument Peak, California, on azimuth 345°03'.

3995–CF–P–75, Microwave Transmission Corporation (New) Vollmer Peak, 1.1 Miles SW of Orinda, California. Lat. 37°52'58'' N. Long. 122°13'11'' W. Application amended (a) to add 10855H MHz, 10895V MHz, 10975V MHz, 11095H MHz and 11135V MHz toward Monument Peak, California, on azimuth 144°37'; and (b) to add 11055H MHz toward new point of communication at Concord, California, on azimuth 63°26'.

3997–CF–P–75, Same. (New) Monterey, California. Lat. 36°35'08'' N. Long. 121°51'09'' W. Application amended (a) to change polarity to 11225V MHz, 11305V MHz, 11465V MHz, 11545V MHz and 11625V MHz toward Seaside, California, on azimuth 17°01'; and (b) to add 11465H MHz toward new point of communication at Bald Ridge, California, on azimuth 18°40'.

6644–C1–P–73, Microwave Transmission Corporation. (New) Amendment to change polarization from horizontal to vertical on frequency 10975 MHz toward Monument Peak, California. Station location; Bald Ridge, California. All other particulars to remain the same as reported in public notice dated January 14, 1974.

[FR Doc.75–17500 Filed 7–3–75;8:45 am]

FEDERAL MARITIME COMMISSION

COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO, ET AL.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before July 17, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairnes with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO, COMPANHIA DE NAVEGACAO MARITIMA NETUMAR, AND MOORE-MCCORMACK LINES, INCORPORATED.

Notice of agreement filed by:

Mr. Hubert F. Carr
Vice President and Secretary
Moore-McCormack Lines, Incorporated
One Landmark Square
Stamford, Connecticut 06901

Agreement No. 10054–1 among Companhia De Navegacao Lloyd Brasileiro, Companhia De Navegacao Maritime Netumar S/A and Moore-McCormack Lines, Incorporated extends the effective period of the U.S. Atlantic/Brazil Discussion Agreement for two years from August 1, 1975.

By Order of the Federal Maritime Commission.

Dated: July 1, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75–17531 Filed 7–3–75;8:45 am]

[Independent Ocean Freight Forwarder License No. 1387]

DORSEY EXPRESS, INC.

Order of Revocation

On June 23, 1975, the Federal Maritime Commission received notification that Dorsey Express, Inc., 561 Dorsey Road, Glen Burnie, Maryland 21061 wishes to voluntarily surrender its Independent Ocean Freight Forwarder License No. 1387 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) § 7.04(f) (dated 9/15/73);

It is ordered, That Independent Ocean Freight Forwarder License No. 1387 of Dorsey Express, Inc. be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1387 be and is hereby revoked effective June 23, 1975, without prejudice to reapply for a license at a later date.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Dorsey Express, Inc.

ROBERT S. HOPE,
Managing Director.

[FR Doc.75–17532 Filed 7–3–75;8:45 am]

PACIFIC COAST EUROPE RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before July 28, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

PACIFIC COAST EUROPE RATE AGREEMENT; EXTENSION OF AGREEMENT

Notice of agreement filed by:

David Lindstedt, Acting Chairman
Pacific Coast European Conference
417 Montgomery Street
San Francisco, California 94104

Agreement No. 10052–1, among the Pacific Coast European Conference, Sea-Land Service, Inc. and Seatrain International, S. A., is a request for an extension of approval of the basic agreement for a further period of three years from the present expiration date of August 28, 1975.

By Order of the Federal Maritime Commission.

Dated: July 1, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75–17530 Filed 7–3–75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP75–364]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Application

JUNE 27, 1975.

Take notice that on June 13, 1975, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP75–364 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in Deaf Smith County, Texas, in order to enable Applicant to receive into its 24-inch pipeline artificial gas to be purchased from ERA, Incorporated, d/b/a ERA of Lubbock, Inc. (ERA), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant alleges that it has entered into an agreement with ERA dated April 14, 1975, for the purchase of gas produced from an anaerobic processing facility which will be located in Deaf Smith County, Texas, and constructed within 18 months if possible. Applicant states that the agreement is subject to the parties' obtaining necessary regulatory authorization; and if the authorizations are not issued on or before October 1, 1975, or are unsatisfactory to either party, either party may cancel the contract. Applicant states that it will purchase the plant production up to 3,000 Mcf of gas per day, with an option for increased volumes if production exceeds 3,000 Mcf per day. It is stated in the application that the price of this artificial gas under the agreement is $1.30 per Mcf with an upward and downward Btu adjustment from a 1,000 Btu base per cubic foot of artificial gas. Applicant states that it will reimburse ERA for new taxes levied on the artificial gas.

Applicant states that the price is also subject to escalation in accordance with the following:

(a) On the day of first delivery, the price shall be adjusted on a one-time basis by adding to the base price the product of:

$$0.30\left(\frac{C_2}{C_1}-1\right)$$

where:

C_2 is the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the latest available month prior to the first delivery of gas under the agreement; and

where:

C_1 is the same index for the month and year of the execution of the agreement (April 1975).

(b) Once each year on the first day of the third month succeeding the anniversary of initial deliveries of gas, the price per Mcf is adjusted by adding to the base price the following:

$$0.30\left(\frac{C_2}{C_1}-1\right)$$

where:

C_2 is the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the month of the anniversary date of deliveries under the agreement; and

where:

C_1 is the same index for April 1975.

Applicant states that the facilities needed to receive the ERA gas would consist of a tap connection and a measuring facility, which Applicant estimates would cost approximately $22,000, to be financed from cash on hand. Applicant requests permission to recover through its purchased gas adjustment clause the cost of purchasing the ERA gas on a rolled-in basis, or alternatively, as a research and development expense even though Applicant will not own or operate the production facilities. Applicant alleges that due to the small amount of gas deliveries anticipated, incremental pricing would be impracticable and that 36 of Applicant's 48 customers would receive less than 5 Mcf per day.

Applicant submits that the proposed project should be approved because

(a) Applicant will obtain a supply of gas at prices no higher (actually considerably less, it is stated) than any other supplementary source such as SNG, LNG, or coal gas;

(b) There is the prospect for additional supplies from several similar plants;

(c) The total energy resource base will have been enlarged by development of a new source of gas;

(d) The operating experience obtained from this plant should permit improved design and operation of subsequent plants leading to lower costs per Mcf;

(e) The Commission has encouraged pipelines to invest in research and development by providing methods for pipelines to pass such costs on to their customers in § 154.38(d)(5). The Commission, by an order issued September 4, 1974, in Docket No. RP73–110, has approved a provision whereby Applicant may place into effect, without suspension, cost of service charges reflecting research and development expenditures. Applicant believes the arrangement set forth in this application is more advantageous to the interstate gas consumer in that the risk and financing burden is borne by ERA. The consumer benefits from expertise of ERA not possessed by Applicant and will enjoy the new source of gas developed by a successful anaerobic process, while paying only purchased gas costs;

(f) The anaerobic process will also reduce the toxicity of animal waste and lessen its otherwise obnoxious characteristics.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75–17487 Filed 7–3–75;8:45 am]

[Docket No. CP75–361]

NORTHERN NATURAL GAS CO.

Application

JUNE 27, 1975.

Take notice that on June 10, 1975, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP75–361 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and distribution as a contract demand service in lieu of a full requirements service, of natural gas to its Peoples Natural Gas Division, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has rendered service to the communities of Copeland, Elkhart, Fowler, Garden City, Hugoton, Meade, Moscow, Plains, Rolla, Santana, and Sublette, Kansas, and to various rural customers (Argus communities) through its Peoples Natural Gas Division on a full-requirements basis since it acquired Argus Natural Gas Company, Inc., a wholly owned subsidiary, on April 30, 1945. Applicant further states that it has submitted to the Commission a settlement proposal in the proceeding in Docket No. RP74–102 and that among the provisions of the settlement agreement are the establishment of contract demand volumes for the Argus communities and making such sales subject to the terms of Paragraph 9 of the General Terms and Conditions of Volume 1 of Applicant's FPC Gas Tariff. Large volume customers that could be affected by the proposed settlement include the City of Meade Power Plant, Collingwood Grain Co., Cargill, Inc., Elkhart Coop Equity Exchange, Farmland Foods, Inc., Western Alfalfa, in Garden City, and Western Alfalfa, near Sublette, all of whom could become subject to curtailment. Applicant states that Peoples plans to file with the State Corporation Commission of Kansas to make Peoples' retail gas tariff on file with the Kansas Corporation Commission comport with Northern's tariff to allow curtailment of the large volume customers.

The contract demands for the Argus communities have been determined by expanding the maximum day requirements to 65 D.D.D. to be as follows:

	Contract demand (M ft³/day)
Copeland	324
Elkhart	1,676
Fowler	514
Garden City	13,754
Wheatland Electric Corp	1,000
Hugoton	2,370
Meade	1,781
Moscow	271
Plains	710
Rolla	376
Santana	808
Sublette	1,046
Rural Tap Sales:	
Gathering Lines	1,500
Argus Mainline	450
Other Mainline	2,510
Jetmore	605
Rural tap customers	200
Total	29,895

Applicant further proposes to transfer the community of Jetmore and certain associated small rural volume tap customers from Group A to Group O curtailment and that 605 Mcf of Group A contract demand will be assigned to Jetmore and that 200 Mcf of Group A contract demand will be assigned to the rural tap customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75–17488 Filed 7–3–75;8:45 am]

[Docket No. E-9504]

UNION ELECTRIC CO.

Filing of Appendices to Interconnection Agreement

JUNE 27, 1975.

Take notice that on June 19, 1975, the Union Electric Company (Union) tendered for filing proposed appendices to an Interconnection Agreement dated February 18, 1972 between Union, Central Illinois Public Service Company (CIPS), and Illinois Power Company (IP), said appendices being designated as (1) revised Appendix A, CIPS-IP Connection 7—West Frankfort, dated June 9, 1975, and (2) new Appendix B, CIPS-UE Connection 7—West Frankfort, dated June 2, 1975. Union states that the modifications provided for in the appendices reflect compliance with provisions included on page (3), part (B), of the Commission's Order with respect to an exchange of facilities between CIPS and IP in Docket No. E-9199, thus superseding the existing Appendix C, IP-UE Connection 6—West Frankfort.

Union requests a waiver of the Commission's regulations to allow an effective date of June 20, 1975.

Union states that copies of this filing have been sent to CIPS, IP, the Missouri Public Service Commission, and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 10, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17483 Filed 7-3-75;8:45 am]

[Docket No. RP75-30]

UNITED GAS PIPELINE CO.

Further Extension of Procedural Dates

JUNE 26, 1975.

On June 20, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued December 19, 1974, as most recently modified by notice issued April 2, 1975, in the above-designated matter. The motion states that the parties have been notified and have not objected.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Staff Testimony, September 16, 1975.
Service of Intervenor Testimony, October 14, 1975.
Service of Company Rebuttal, October 28, 1975.
Hearing, November 11, 1975 (10 a.m. e.d.t.).

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17484 Filed 7-3-75;8:45 am]

[Docket No. E-9501]

VIRGINIA ELECTRIC AND POWER CO.

Contract Supplement

JUNE 27, 1975.

Take notice that on June 18, 1975, Virginia Electric and Power Company (Virginia) tendered for filing a contract supplement dated May 16, 1975, to the Agreement designated as Virginia's Rate Schedule FPC No. 80-23 between Virginia and Northern Neck Electric Cooperative (Northern Neck).

Virginia states that said supplement requests Commission authorization for connection of Northern Neck's new delivery point (Sanders), located on the north side of Route 612 approximately 1 mile west of the intersection of Route 3 and Route 612, new Lyells Post Office, in Westmoreland County, Virginia.

Virginia requests an effective date as that of the date of connection of facilities which is expected to occur sometime in September, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 15, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17485 Filed 7-3-75;8:45 am]

[Docket Nos. CP75-155 and CP75-162]

WISCONSIN GAS CO. AND NORTHERN STATES POWER CO.

Findings and Order After Statutory Hearing

JUNE 23, 1975.

On November 21, 1974, Wisconsin Gas Company (Wisconsin Gas), filed in Docket No. CP75-155 an application pursuant to section 1(c) of the Natural Gas Act for a declaration of exemption from the provisions of the Act and pursuant to section 7(c) of the Act for a certificate of public convenience and necessity authorizing Wisconsin Gas to deliver quantities of natural gas to Northern States Power Company (Wisconsin) [hereinafter NSP] in exchange for half the equivalent in liquefied natural gas (LNG), all as more fully set forth in the application in Docket No. CP75-155.

On November 22, 1974, NSP filed in Docket No. CP75-162 a motion pursuant to § 1.7(c) of the Commission's rules of practice and procedure (18 CFR 1.7(c)) for a declaratory order that the transaction by NSP involving the sale of LNG to Wisconsin Gas is not subject to the jurisdiction of the Commission or, in the alternative, for a declaration that NSP, with respect to said sale, is exempt from the provisions of the Natural Gas Act pursuant to section 1(c) thereof, all as more fully set forth in the motion in Docket No. CP75-162.

By Commission order issued September 24, 1974, in Docket No. CP74-147 (52 FPC —), Michigan Wisconsin Pipe Line Company (Mich Wisc) and Midwestern Gas Transmission Company (Midwestern) were authorized to exchange natural gas in interstate commerce for the purpose of enabling Wisconsin Gas, a customer of both Mich Wisc and Midwestern, to deliver quantities of vaporous gas to NSP, a customer of Midwestern, in exchange for half the equivalent of LNG delivered by NSP to Wisconsin Gas in order to augment the supply of Wisconsin Gas for service to certain communities in western Wisconsin for the winter seasons 1974-1975 through 1977-1978. These communities are normally served by Wisconsin Gas from gas supplies made available by Northern Natural Gas Company (Northern), whose supplies have been unable to meet firm peak-day requirements of said communities. In the September 24, 1974, order it is stated that Wisconsin Gas will make available through exchange arrangements with Mich Wisc and Midwestern vaporous gas curtailed from interruptible and industrial boiler operations in the Milwaukee area, in exchange for LNG delivered to the communities in Western Wisconsin by NSP. The September 24, 1974, order authorizes Mich Wisc to deliver less than its contractual volumes to Wisconsin Gas in the Milwaukee, Wisconsin, area, whereupon Mich Wisc is to reduce its volumes received from Midwestern near Marshfield, Wisconsin, and Midwestern is to deliver concurrently equivalent volumes to NSP near Fargo, North Dakota. The volumes of this vaporous gas will be determined by multiplying by two the equivalent volumes of LNG NSP will deliver to Wisconsin Gas at the outlet of NSP's LNG plant at Eau Claire for transportation to municipalities in western Wisconsin. The schedule of such deliveries will be as follows:

Maximum total volumes to be delivered (thousands of cubic feet)

Year [1]	By NSP, vapor gas equivalent to LNG	By Wisconsin Gas, vapor gas	Wisconsin Gas' maximum daily payback obligation
1975–76	40,000	80,000	3,000
1976–77	[2] 60,000	120,000	4,000
1977–78	[2] 75,000	150,000	5,000

[1] LNG to be delivered between Sept. 1 and following Mar. 31—exchange gas between Nov. 15 and following Mar. 31.
[2] Volumes in excess of 40,000 Mf equivalent of LNG subject to renegotiation prior to the 1976–77 heating season.

The order of September 24, 1974, was conditioned upon Wisconsin Gas' and NSP's submitting appropriate filings for certificate authorization, since the exchange between Wisconsin Gas and NSP is subject to the jurisdiction of the Commission. Wisconsin Gas, accordingly, requests that the Commission issue a certificate of public convenience and necessity authorizing Wisconsin Gas to engage in the sale and exchange of vaporous natural gas for LNG with NSP, limited as to service and time as described in the application in the instant proceeding [3] and any such other authority, if any, as may be deemed appropriate. Wisconsin Gas further requests the Commission declare exempt pursuant to the provisions of section 1(c) of the Natural Gas Act the operations of Wisconsin Gas except for the service specifically applied for in the application in Docket No. CP75–155.

Wisconsin Gas alleges that it is a distributor of natural gas subject to the jurisdiction of the Public Service Commission of Wisconsin which regulates the rates, service and facilities of Wisconsin Gas. Wisconsin Gas further alleges that all of its operations are conducted and its facilities installed within the State of Wisconsin and that all gas purchased from Wisconsin Gas' suppliers is ultimately consumed within the State of Wisconsin.

NSP, in response to the condition in the order of September 24, 1974, requests that the Commission modify or supplement said order by declaring that the activities of NSP under the subject vaporous gas-LNG exchange will not be the transportation of natural gas in interstate commerce or the sale in interstate commerce of natural gas for resale and will not, therefore, be subject to the jurisdiction of the Commission, and that NSP will not be a natural gas company within the meaning of the Natural Gas Act as a result of this transaction. In support of this contention NSP states that the applicable contract only requires NSP to provide LNG to Wisconsin Gas, and that the LNG, which is transported by truck entirely within Wisconsin, is not commingled with any interstate gas. NSP further contends that the contract only provides for Wisconsin Gas to pay back double the LNG volumes to NSP through Midwestern's lines, that Wisconsin Gas' arrangements to have the vaporous gas transported by Mich Wisc and Midwestern to Fargo are acceptable to, but not required by, NSP, and that Wisconsin Gas could have had the gas delivered to NSP at one of Midwestern's delivery points to NSP in Wisconsin or elsewhere. NSP asserts that it transports no gas in interstate commerce and that the sale of LNG from NSP's tank is made in the state of Wisconsin for use wholly in the state of Wisconsin.

Alternatively, NSP requests the Commission to issue an order that NSP is exempt under section 1(c) of the Natural Gas Act in connection with the implementation of the subject sale and exchange of vaporous gas and LNG and is thereby relieved from the necessity of complying with the Commission's accounting and reporting requirements. In support of this request NSP states that, as far as the subject proposal is concerned it receives all its gas in or at the boundary of Wisconsin and that all of the natural gas so received is ultimately consumed within the State of Wisconsin. NSP also provides certification from the Public Service Commission of Wisconsin (PSC) that the rates, service and facilities of NSP are subject to the jurisdiction of the PSC and that the PSC is exercising such jurisdiction. NSP's allegations in its filing in Docket No. CP75–162 may be at variance with facts that the Commission currently has before it.

By order issued July 12, 1972, in Docket No. CP72–201 (48 FPC 65) NSP was authorized to sell LNG in interstate commerce to its parent, Northern States Power Company (Minnesota) [NSP (Minnesota)] near St. Paul, Minnesota, from the same LNG plant from which it proposes to deliver LNG to Wisconsin Gas.[4] The Commission did not authorize the construction and operation of the Eau Claire LNG facilities. As it appears now, gas is received at Eau Claire via the pipeline system of Midwestern. After liquefaction and storage, the LNG is then sold out of state.

Since the sale to NSP (Minnesota) constitutes a sale of natural gas in interstate commerce for resale for ultimate public consumption within the meaning of section 1(b) of the Natural Gas Act, the construction and operation of the Eau Claire LNG facilities for such sale require that a certificate of public convenience and necessity be applied for and obtained, pursuant to Subsections (c) and (e) of section 7 of the Act. The Commission's jurisdiction over the sale of LNG and the facilities necessary therefor engenders inquiry into NSP's actions. It appears that NSP is in violation of the Natural Gas Act, since it constructed, without a certificate, facilities for which a certificate is required pursuant to section 7(c) of the Act.

The July 12, 1972, order in Docket No. CP72–201, in ordering paragraphs (B) and (C) further requires NSP to comply with the provisions of Part 154 and to comply with other Commission filing requirements with respect to the sale of LNG authorized in the order. NSP has not made such filings.

A sale of gas is in interstate commerce within the meaning of the Natural Gas Act if the gas crosses a state line at any stage of its movement from wellhead to ultimate consumption. California v. Lo-Vaca Gathering Co., 379 U.S. 368, 369 (1965). The provisions of the Act do not apply if gas is received and ultimately consumed within or at the boundary of a state, pursuant to section 1(c) of the Act. Section 1(c), however, only applies if all the natural gas received within the state is ultimately consumed within the state. Since NSP sells part of the LNG from the Eau Claire facility outside Wisconsin, the section 1(c) exemption does not apply to sales from the facility to other customers of NSP. The sale proposed in NSP's filing in Docket No. CP75–162, therefore, would be a sale for resale in interstate commerce. Before said sale may be undertaken a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act must issue from this Commission.

After due notice by publication in the FEDERAL REGISTER on December 10, 1974, in Docket No. CP75–155 (39 FR 43120) and on January 7, 1975, in Docket No. CP75–162 (40 FR 1316), Mich Wisc filed a petition to intervene in Docket No. CP 75–155 and Wisconsin Gas filed a petition to intervene in Docket No. CP75–162. The Public Service Commission of Wisconsin filed a notice of intervention in Docket No. CP75–155. No further petitions to intervene, further notices of intervention, or protests to the granting of the applications have been filed.

At a hearing held on June 11, 1975, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the

[3] The service described in the instant application is the same service described in the September 24, 1974, order.

[4] The July 12, 1972, order in Docket No. CP72–201 issued a certificate of public convenience and necessity authorizing the sale as well as the transportation of the LNG by means of cryogenic semi-trailers over public highways. The order was conditioned to the determinations made by the Commission in the proceeding then pending Docket No. R–377. On May 4, 1973, the Commission issued its Order Terminating Proposed Rulemaking Proceeding in Docket No. R–377 (49 FPC 1078) which found that the Commission does not have jurisdiction over the transportation of LNG by means other than pipeline. Nothing in the May 4, 1973, order however, changes the Commission's jurisdiction over the sale of LNG in interstate commerce. The Commission has jurisdiction over the sale of LNG in interstate commerce to the same extent that it does over vaporous gas, as determined by Opinion Nos. 613 and 613–A, Distrigas Corp. (47 FPC 752, 1465).

application in Docket Nos. CP75–155 and CP75–162 and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record.

The Commission finds: (1) Wisconsin Gas, a Wisconsin corporation having its principal place of business in Milwaukee, Wisconsin, will be a "natural-gas company" within the meaning of the Natural Gas Act upon commencement of the operations for which authorization is sought by Wisconsin Gas in the application in Docket No. CP75–155.

(2) The sales for resale of natural gas, as more fully described in the applications in Docket Nos. CP75–155 and CP75–162 are sales for resale in interstate commerce subject to the jurisdiction of the Commission and said sales and the proposed exchange of gas between Wisconsin Gas and NSP are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Wisconsin Gas is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulation of the Commission thereunder.

(4) The sale and exchange of natural gas described herein is required by the public convenience and necessity and a certificate therefor should be issued to Wisconsin Gas as requested in its application in Docket No. CP75–155, as hereinafter ordered and conditioned.

(5) Participation by the petitioners to intervene in the proceedings in which they have requested permission to intervene may be in the public interest.

(6) Wisconsin Gas is a distributor of natural gas subject to the jurisdiction of the Public Service Commission of Wisconsin, which regulates the rates, service and facilities of Wisconsin Gas.

The Commission orders: (A) Upon the terms and conditions of this order a certificate of public convenience and necessity is issued authorizing Wisconsin Gas to sell and exchange natural gas as hereinbefore described and as more fully described in the application in Docket No. CP75–155.

(B) The certificate granted in paragraph (A) above and the rights granted thereunder are conditioned upon Wisconsin Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly with the general terms and conditions set forth in Part 154 and paragraphs (a), (e) and (f) of § 157.20 of such regulations.

(C) The certificate granted in paragraph (A) above and the rights granted thereunder are further conditioned upon the filing by NSP within 60 days of this order of an application for appropriate certificate authorization and upon approval of such application by the Commission.

(D) NSP's request for an order disclaiming jurisdiction or declaring NSP exempt from the provisions of the Natural Gas Act is denied. Such denial is without prejudice to NSP's applying for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for the operations described in the filing in Docket No. CP75–162.

(E) NSP is directed to make all filings as required by ordering paragraphs (B) and (C) of the order issued July 12, 1972, in Docket No. CP72–201.

(F) NSP is directed to show cause, if any there be within 30 days why it should not file an application pursuant to section 7(c) of the Natural Gas Act for the construction and continued operation of its LNG plant at Eau Claire, Wisconsin, and why its actions in constructing and operating the Eau Claire facility are not in violation of the Natural Gas Act.

(G) Wisconsin Gas is exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of the Commission with respect to its operations not covered by the request in the application in Docket No. CP75–155.

(H) The petitioners to intervene are permitted to intervene in those proceedings in which they have requested permission to intervene, subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and *Provided, further,* that the admission of said interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in these proceedings.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75–17486 Filed 7–3–75;8:45 am]

[Docket No. CP75–360]

EL PASO NATURAL GAS CO.

Application

JUNE 27, 1975.

Take notice that on June 10, 1975, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP75–360 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the implementation of special operating arrangements with its California customers, Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal), involving the modification of schedules of sales and deliveries through April 30, 1977, and the transportation, sale and delivery of gas to its east-of-California customers commencing with the 1975–76 heating season, to preserve the available gas supply for protection of winter heating-season service to Priority 1 and 2 requirements of its east-of-California customers, all as set forth more fully in the application on file with the Commission and open to public inspection.

Applicant states that it has been unable to acquire sufficient sources of gas to offset the decline in deliverability from connected sources of gas and that firm requirements of Applicant's interstate customers exceed available gas supplies. Applicant states that it expects, due to the supply deficiency to experience increasing difficulty in satisfying the Priority 1 and 2 requirements of its interstate system in the future heating seasons.

Applicant states further that the comparison of projected customer entitlements expressed in accordance with Applicant's interpretation of end-use priorities of service classifications and Applicant's most recent forecast of gas supply from its connected sources available for sale indicates that significant deficiencies in supply necessary to meet the Priority 1 and 2 requirements of Applicant's east-of-California customers will occur absent some form of load equation. Such comparison is said to indicate that the deficiency in supply available for use in serving east-of-California Priority 1 and 2 requirements will approximate the following volumes, stated in Mcf, during the heating seasons shown: [1]

1975–76	1976–77	1977–78	1978–79	1970–80
2,234,957	6,339,161	12,754,164	20,531,950	27,879,452

Applicant alleges that insufficient deliverability during the 1974–1975 heating season forced it to curtail firm requirements on every day of the heating season. Applicant states that for the period from November 1, 1974, through April 30, 1975, the total aggregate curtailment of Priority 3, 4, and 5 requirements was 115,440,340 Mcf.

Applicant states that because of its anticipation of additional difficulties in protecting its service to east-of-California customers' Priority 1 and 2 requirements, Applicant has reached an agreement with its California customers, PG&E and SoCal, relative to certain operating arrangements providing Applicant with a means of assuring protection of service to its east-of-California customers' high priority requirements.

Applicant states that in consideration of PG&E's forecast of additional storage

[1] Applicant states that its interstate system is presently governed by the interim curtailment plan prescribed by the Commission in Opinion Nos. 634 and 634–A, issued October 31, 1972, and December 15, 1972, respectively, in Docket No. RP72–6, as is reflected in Applicant's effective FPC Gas Tariff on file with the Commission. Applicant alleges that by Commission Opinion Nos. 697 and 697–A issued June 14, 1974, and December 19, 1974, respectively, in Docket No. RP72–6, a new curtailment plan has been prescribed and is pending effectiveness and that Applicant is interpeting the end-use priorities of service classifications as it interpets the prescriptions in the aforesaid Opinion Nos. 697 and 697–A. Applicant also alleges that the requirements supply deficiency that it predicts envisions the growth of Priority 1 and 2 allocations through October 31, 1974, that irrigation fuel would be classified Priority 3, and that flame stabilization and ignition fuel uses would be classified as Priorities 3, 4 or 5.

capacity, Applicant and PG&E have entered into a letter agreement dated May 30, 1975, which provides the terms and conditions under which the operating arrangements would be accomplished. Applicant further states that it would from time to time sell and deliver to PG&E, at the existing delivery point near Topock, Arizona, certain quantities of gas (advance sale gas) in excess of the quantities of gas which PG&E would receive otherwise. Applicant alleges that it would have the right to recoup such additional deliveries of gas, together with those quantities of advance sale gas previously delivered to PG&E, totalling approximately 13,691,768 Mcf, as necessary for the protection of service to Applicant's east-of-California Priority 1 and 2 requirements customers, by reduction in the amount of gas otherwise scheduled for delivery to PG&E during the 1975–1976 and the 1976–1977 heating seasons.[2] Applicant alleges that such reductions would be subject to PG&E's own judgment as to its system's operational capability to accept such reduced deliveries while continuing to provide reliable service to its own firm or high-priority requirements and that such arrangement would enable Applicant to preserve such quantities of advance sale gas as necessary for maintenance of reliable service to the Priority 1 and 2 requirements of its east-of-California customers during the 1975–76 and 1976–77 heating seasons. Further, it is alleged that present forecasts indicate that most, if not all, of such preserved supply can be made available for use beyond such periods. Applicant states that the advance sale gas to be sold and delivered to PG&E would be obtained by reducing those supplies of gas which would otherwise be available to serve the Priority 5 requirements of Applicant's east-of-California customers. Applicant would have the right, subject to PG&E's consent, to reduce daily deliveries to PG&E below the volumes which PG&E would otherwise be entitled to receive from Applicant subject to the provisions of Applicant's curtailment plan in effect at such time. Applicant would not, however, be permitted to reduce the volume deliverable to PG&E on any day by a quantity exceeding 300,000 Mcf unless PG&E so consents.

Applicant states that PG&E has agreed to purchase such additional advance sale gas from Applicant on a monthly basis at the rate in effect under Rate Schedule G of Applicant's FPC Gas Rate Tariff, Original Volume No. 1, under the currently effective firm service agreement on the date of delivery computed at the unit cost that results from a load factor of 100 percent, less the amortization charge attributable to increases in special overriding royalty costs in effect from April 2, 1975, through September 30, 1975, pursuant to Applicant's latest rate filing in Docket No. RP74–57, further no charge would apply to the replacement quantities of gas delivered to PG&E by Applicant for compressor fuel and losses incident to the special operating arrangements.

Applicant states that it has agreed that as compensation to PG&E for participation in such special operating arrangements, Applicant would for each month or part thereof, during the period from the date that all regulatory authorizations have been received through April 30, 1977, credit its monthly billing to PG&E under the Service Agreement of February 10, 1969, between Applicant and PG&E by a total of:

(1) An amount derived by multiplying 2.71 cents per Mcf by the net advance sale balance at the time of billing;

(2) 1.3 percent of an amount equal to the sum paid by PG&E for advance sale gas under the advance agreement, dated April 18, 1974, as amended on August 16, 1974, for the net advance sale balance which Applicant states will be calculated for this purpose as equal to the advance sale gas balance retained on May 1, 1975, by PG&E to be applied to such future reductions as may take place plus additional deliveries of advance sales gas delivered to PG&E through the end of the preceding month minus 1½ percent of the advance sales gas delivered to replace the quantities used by PG&E as compressor fuel and for replacement losses, and reductions in deliveries to PG&E below the quantities of gas to which PG&E would otherwise be entitled to receive in the absence of the special operating arrangements, providing that by May 1, 1977, the cumulative quantity of reductions does not equal the remaining advance sales gas delivered by Applicant;

(3) An amount derived by multiplying $.5765 by the number of Mcf during the billing month by which Applicant has reduced deliveries to PG&E to assist Applicant in maintaining service to its high priority east-of-California customers, not to exceed 300,000 Mcf daily, and with prior notice to PG&E, with PG&E's consent if in PG&E's judgement such a reduction would not jeopardize PG&E's firm or high priority service, or otherwise affect its operational capabilities, or if PG&E agrees to such lesser reduction, any such reduction as it shall specify.

Applicant alleges that by Letter Agreement dated April 30, 1975, Applicant and SoCal have agreed to extend certain arrangements designed for the protection of Applicant's east-of-California high-priority peak day requirements during the 1975–1976 and 1976–1977 heating seasons. Applicant states that SoCal has agreed, subject to SoCal's sole judgment of its system's daily operational capability and the ability of that system to permit such arrangements without jeopardizing service to SoCal's firm requirements of its customers, to accept reduced deliveries.[3] Applicant states that it would credit SoCal's monthly billing from Applicant by an amount equal to 37.5 cents per Mcf multiplied by the total quantity of gas which has been diverted from SoCal during such month pursuant to the proposed agreement. Applicant states further that it would not be permitted to reduce the volume deliverable to SoCal on any day by a volume exceeding 300,000 Mcf.

Applicant states that it has filed concurrently with the instant application its filing proposing changes in the storage service provisions of its tariff pursuant to Part 154 of the Commission's Regulations as necessary to implement the proposed operating arrangements. The filing is alleged to contain a provision for a surcharge rate of 8.37 cents per Mcf as a result of and to recover for Applicant the cost of the operating arrangements proposed in the instant application from Applicant's east-of-California customers having Priority 1 and 2 requirements who would be the beneficiaries of the proposed arrangements.

Applicant proposes to contract with those of its direct industrial customers who have Priority 1 and 2 requirements and who will benefit from the project presented herein for the recovery from such customers of that portion of such cost attributable to them. Applicant states that separate provisions are also made for disposition to Applicant's appropriate east-of-California customers of any excess in surcharge revenues over actually incurred costs and provisions for Applicant to recover from its affected east-of-California customers any deficiencies in such surcharge revenues under actually incurred costs. Applicant alleges that its tariff filing also includes its proposed initial special Rate Schedule X–35 and the appropriate amendment to

[2] Applicant states that generally the operating arrangements proposed with PG&E would allow:

(1) Applicant to make additional advance sales to PG&E, subject to PG&E's ability to accept gas up to 17,000,000 Mcf. Applicant's advance sales would be in addition to the present advance sale amount of 13,691,768 Mcf being retained by PG&E. The 17,000,000 Mcf figure represents a volumetric limitation on the amount of additional advance sale gas which Applicant would sell and deliver to PG&E under the new agreement and is not an undertaking by PG&E to purchase and receive up to 17,000,000 Mcf under any and all circumstances but an undertaking to accept up to 17,000,000 Mcf if operational constraints and its own system requirements will permit the proposed sales and deliveries. Applicant proposes to deliver approximately 9,000,000 Mcf of the advance sale gas during the summer and fall of 1975.

(2) Applicant to recoup from PG&E equivalent volumes of all advance sales and deliveries up to a volume of 300,000 Mcf per day, when necessary from time to time in order to protect service to Applicant's east-of-California Priority 1 and 2 customers' requirements during the 1975–1976 heating season.

(3) Applicant to be entitled to the net volume of advance sale deliveries not theretofore recouped by Applicant, which would be retained by PG&E through April 30, 1977. Applicant states that by the terms of the agreement, it may be terminated under certain circumstances prior to the 1976–1977 heating season or may be extended through the 1977–1978 heating season.

[3] Applicant states that: "The SoCal arrangements would permit Applicant to reduce deliveries of gas to SoCal during the 1975–1976 and 1976–1977 heating seasons, in quantities of up to 300,000 Mcf daily for a maximum period of five consecutive days, to be used on a peaking basis for protection of service to Applicant's east-of-California customers' Priority 1 and 2 requirements."

its Rate Schedule X-33, which would provide for implementation of the special operating arrangements between Applicant and PG&E and Applicant and SoCal.

Applicant states that no additional facilities are required to be constructed to effectuate the proposed project and no change in Applicant's total system gas supply available for sale would occur under the overall arrangement.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the authorization is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17474 Filed 7-3-75;8:45 am]

[Docket No. CI75-733]

HIGHLAND RESOURCES, INC.

Application

JUNE 27, 1975.

Take notice that on June 11, 1975, Highland Resources, Inc. (Applicant), San Jacinto Building, Houston, Texas 77002, filed in Docket No. CI75-733 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Trunkline Gas Company (Trunkline) produced from Applicant's interests in Blocks 268, 269, and 281, South Marsh Island Area, North Addition, offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to sell to Trunkline 50 percent of the reserves developed in the subject producing properties and to reserve the remainder for its own use. Estimated monthly sales are 130,000 Mcf of gas. The initial contract rate for the subject sales is 67.0 cents per Mcf at 15.025, but Applicant expresses its willingness to accept a certificate conditioned to the rate set forth in § 2.56a of the Commission's general policy and interpretations (18 CFR 2.56a). Applicant notes that the reservation of 50 percent of its reserves for its own use is presently the subject of a proceeding in Tenneco Oil Company, et al., Docket No. CI75-45, et al.

Applicant states that the instant application is filed conditionally. Applicant applied for a small producer certificate in Docket No. CS74-376 which was denied by order issued May 13, 1975. Applicant states that it continues to believe that it is entitled to a small producer certificate and has filed an application for rehearing of said order.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17475 Filed 7-3-75;8:45 am]

[Docket No. CP75-368]

MICHIGAN WISCONSIN PIPE LINE CO.

Application

JUNE 27, 1975.

Take notice that on June 19, 1975, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP75-368 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional delivery point to Wisconsin Public Service Corporation (Public Service) west of Chilton in Calumet County, Wisconsin, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it presently delivers gas to Public Service at 32 delivery points, including a delivery point at Plymouth, Wisconsin, that provides gas to Public Service's Plymouth-Chilton system. Applicant alleges that Public Service cannot meet the design peak day service on the Plymouth-Chilton system in the winter of 1975-1976 without the construction of additional facilities since the maximum allowable operating pressure on the Plymouth-Chilton system is 250 psig while it would be necessary to operate the facilities in excess of 300 psig to serve the presently connected load on a design peak day. Applicant states that Public Service has requested that it provide an additional delivery on Applicant's 30-inch Upper Wisconsin Pipeline Extension west of Chilton, in Calumet County, Wisconsin, to reinforce the Plymouth-Chilton system. Applicant states that there are no interruptible customers being served on the Plymouth-Chilton system, and that all end uses are Priorities I, II or III. Applicant further states that there will be no changes in the gas purchase entitlement as a result of the proposed additional delivery point. Applicant estimates the cost of the proposed facilities would be approximately $55,490 and would be financed with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the

Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17476 Filed 7-3-75;8:45 am]

[Docket No. E-9058]

MISSISSIPPI POWER AND LIGHT CO.

Further Extension of Procedural Dates

JUNE 26, 1975.

On June 24, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued December 20, 1974, as most recently modified by notice issued May 9, 1975, in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Staff Testimony, September 9, 1975.
Service of Intervenor Testimony, September 23, 1975.
Service of Company Rebuttal, October 7, 1975.
Hearing, October 21, 1975 (10 a.m., e.d.t.).

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17477 Filed 7-3-75;8:45 am]

[Docket No. E-9513]

MISSOURI POWER & LIGHT CO.

New Electric Service Agreement

JUNE 27, 1975.

Take notice that Missouri Power & Light Company (Company) on June 23, 1975, tendered for filing a new electric service agreement with the City of Kahoka, Missouri. The agreement, the Company states, is identical, with minor modifications, to FPC Rate Schedule No. 45 presently on file with the Commission.

The Company proposes an effective date of May 12, 1975.

Copies of the filing were served upon the City of Kahoka.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 14, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17478 Filed 7-3-75;8:45 am]

[Docket No. CP75-369]

NORTHWEST PIPELINE CORP.

Application

JUNE 27, 1975.

Take notice that on June 20, 1975, Northwest Pipeline Corporation (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP75-369 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring facility and the sale to and exchange of natural gas with Mountain Fuel Supply Company (Mountain Fuel), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has acquired a new source of gas supply in the Martin Draw Area, Daggett County, Utah. Applicant further states that this acreage is approximately 2 miles from Mountain Fuel's facilities, whereas it is approximately 5 miles directly and would require approximately 10 miles of pipeline to be constructed due to the nature of the terrain to connect to the nearest point on Applicant's transmission system. Applicant states that under the terms of a gas purchase, transportation and exchange agreement between itself and Mountain Fuel dated April 11, 1975, Applicant would deliver to Mountain Fuel all gas purchased by Applicant from Northwest Exploration Company, an affiliate of Applicant, in the Martin Draw Area. The initial rate of the transportation charge charged to Applicant by Mountain Fuel would be initially 4.0 cents per Mcf. Mountain Fuel would have the option to purchase up to 25 percent of the delivered gas at the cost to Applicant, initially 56.0 cents per Mcf, plus a cost-of-service charge of 8.0 cents per Mcf which would include its return on investment in gathering, treating and transmission facilities.

Applicant states that to effectuate the exchange and delivery of gas by it to Mountain Fuel, it would construct and operate measuring facilities adjacent to the wellhead at a cost of approximately $6,200, to be financed from funds on hand. Applicant alleges that it would construct the necessary gathering and transmission facilities pursuant to a budget-type certificate issued by the Commission on January 2, 1975, as amended May 15, 1975, in Docket No. CP75-107, to make delivery to Mountain Fuel at a point on Mountain Fuel's gathering facilities in Daggett County, Utah. Applicant proposes that the redelivery be made at an existing point of interconnection between itself and Mountain Fuel in Sweetwater County, Wyoming. Applicant states that the volumes delivered and exchanged would be balanced on a Btu basis and that such balancing would to the extent possible be achieved on a monthly basis. Applicant states further that the volume of gas to be delivered to Mountain Fuel would be approximately 800 Mcf per day and that Applicant's gathering and transmission systems would have an initial capacity of approximately 4,600 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required. further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17479 Filed 7-3-75;8:45 am]

[Project No. 2106]

PACIFIC GAS AND ELECTRIC CO.

Application for Spillway Modification

JUNE 27, 1975.

Public notice is hereby given that application was filed on May 19, 1975, under the Federal Power Act (16 U.S.C. 791a-825r) by Pacific Gas and Electric Company, Licensee (Correspondence to: Mr.

W. M. Gallavan, Vice President—Rates and Valuation, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106) for approval to replace the existing St. Anthony Falls-type (SAF) energy dissipator with a flip-type spillway bucket (flip bucket) at its Pit 7 Dam of McCloud-Pit Development Project No. 2106.

The SAF energy dissipator has a basin 110 feet wide and 61 feet long. Its elevation is 1,050 feet, 15 feet below the normal tailwater level. The SAF energy dissipator is structurally unstable under high flows. The floor blocks, subjected to cavitation and erosion, have inadequate anchorage and are loosened under the vibrations of high flows. Seven of the original 10 concrete blocks had been destroyed and were replaced with steel-sheathed blocks. One of the steel blocks was lost in January 1974, and the others show signs of loosening. The chute blocks and the walls and floor near them have also lost concrete and developed large erosion holes.

The flip bucket energy dissipator, replacing the SAF dissipator, has a basin 110 feet wide and 83.5 feet long. The end of the bucket will be about 10 feet above the normal tailwater level. Approximately 38,000 cubic yards of concrete will be needed to construct the flip bucket. The flip bucket is designed to handle the maximum discharge of 114,000 cfs through the spillway radial gates.

Construction of the flip bucket will involve a removable coffer dam installed on the end sill, and the existing energy dissipator will be pumped dry. Approximately 600 cubic yards of concrete will be removed from the existing structure by light blasting operations. Normal operations of the reservoir and powerhouse will be continued during the construction, but the maximum storage elevation will be lowered by 10 feet to prevent accidental spilling.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 18, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearings therein must file a petition to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act (16 U.S.C. §§ 825g, 825h) and the Commission's rules of practice and procedure, specifically § 1.32(b) (18 CFR § 1.32(b), as amended by Order No. 518), a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein and if the applicant or initial pleader requests that the shortened procedure of § 1.32(b) be used. If an issue of substance is so raised or applicant or initial pleader fails to request the shortened procedure, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17480 Filed 7-3-75;8:45 am]

[Docket No. CP75-367]

SOUTHERN NATURAL GAS CO. AND MID LOUISIANA GAS CO.

Application

JUNE 27, 1975.

Take notice that on June 13, 1975, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, and Mid Louisiana Gas Company (Mid Louisiana), 300 Poydras Street, New Orleans, Louisiana 70130, jointly Applicants, filed in Docket No. CP75-367 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and exchange of natural gas and the construction and operation of facilities to effectuate the proposed exchange, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that Mid Louisiana has contracted to purchase from Mobil Oil Corporation (Mobil) the portion of gas produced from Block 140, Main Pass Area, offshore Louisiana, attributable to Mobil's interest. Applicants further state that Mid Louisiana has assigned to Southern 40 percent of its rights and obligations to the Mobil Block 140 gas, as set forth in an April 18, 1975, exchange agreement between Applicants. Applicants allege that under the agreement Mid Louisiana would construct and operate a pipeline between the point of receipt gathered onshore by Mobil and a proposed interconnection with Southern's 16-inch pipeline near Grand Bay, in Plaquemines Parish, Louisiana, for the transportation of all Block 140 gas to which Applicants have rights. Southern would accept at the proposed interconnection all of the Block 140 gas transported from Mid Louisiana and that 60 percent would be for exchange through redelivery to Mid Louisiana at other exchange points. Applicants state that Southern purchases gas produced in the Monroe Field, in northeastern Louisiana, from Ashland Oil, Inc. (Ashland), and that such gas is delivered to Southern at Southern's Perryville compressor station in the Monroe field. Applicants state that Southern and Mid Louisiana have an interconnection point at the Perryville station and that Mid Louisiana would accept gas either at the Perryville exchange point or at the outlet of Ashland's Cargas Compressor Station, all in the Monroe Field.

Applicants anticipate that the deliveries from Block 140 and the redeliveries in Monroe Field would average 10,000 Mcf per day. The application states that the exchanges would be brought into exact balance as soon as operationally feasible by the deficient party's making additional deliveries at other exchange points. If Southern is deficient, it may deliver additional gas to Mid Louisiana in the Lake St. John Field in Concordia Parish, Louisiana, or it may, when acceptable to Mid Louisiana, deliver gas in addition to that purchased from Ashland, to Mid Louisiana at the Perryville Exchange Point. If Mid Louisiana is deficient, it may deliver additional gas to Southern in the Lake St. John Field, or it may, when acceptable to Southern, deliver additional gas into Southern's transmission at the Perryville Exchange Point. Deliveries in the Lake St. John Field would be made to Southern at its existing point of receipt in the field and to Mid Louisiana at International Paper Company's existing point of receipt in the field. Volumes would be balanced by Btu content after deducting the shrinkage.

Applicants state that the facilities proposed to be constructed and operated by Mid Louisiana are a meter and necessary appurtenances in Plaquemines Parish, Louisiana, 3 miles of 6-inch transmission pipeline and appurtenances between the point where Mid Louisiana receives the gas gathered from Block 140 and the Grand Bay exchange point, a segment of pipe and the rearrangement of valves, fittings, and metering facilities at the Perryville exchange point to allow for direct delivery and receipt of gas to and from Southern, and an extension of one of Mid Louisiana's gathering lines in Monroe Field to the outlet of Ashland's Cargas Compressor Station. Southern would construct and operate a tap on its 16-inch transmission pipeline at the Grand Bay exchange point. Applicants estimate that the total cost of the proposed facilities would be $47,636 for Southern's construction, and $255,500 for Mid Louisiana's construction. Applicants state that the proposed construction would be financed out of available company funds.

Applicants state that the proposed exchange agreement, sale and construction would permit Mid Louisiana to have the benefit of gas produced in the Gulf of Mexico without the construction of extensive facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 18, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR

157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17481 Filed 7-3-75;8:45 am]

[Docket No. CP75-371]

SOUTHWEST GAS CORP.

Application

JUNE 27, 1975.

Take notice that on June 23, 1975, Southwest Gas Corporation (Applicant), P.O. Box 1450, Las Vegas, Nevada 89101, filed in Docket No. CP75-371 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of transmission facilities for safety purposes and the construction and operation of up to 20 sales taps on Applicant's northern Nevada transmission system, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes in the instant application to upgrade and replace certain existing transmission facilities on its northern Nevada transmission system which, Applicant states, are required to comply with Department of Transportation safety regulations. Applicant indicates that the proposed facilities would include monitor regulators, isolation valves, shut-off valves, relief valves, service regulators, pressure protection and a mainline scrubber at an estimated cost of approximately $176,600, to be financed with cash on hand.

Applicant further requests authorization to construct and operate up to 20 taps at unspecified locations to be used for the sale of gas to future Priority 1 and 2 requirements customers which would use the gas for cooking and space heating. The cost of each of the proposed sales facilities would be approximately $1,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.75-17482 Filed 7-3-75;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW; FEDERAL POWER COMMISSION

Notice of Withholding of Clearance of Report Proposal

Notice is hereby given that the General Accounting Office (GAO) will not issue clearance of the Federal Power Commission's proposed Form 40, Annual Report of Proved Domestic Gas Reserves. This is a new annual report that would be filed by all "natural gas companies" as defined by the Natural Gas Act.

In section 409 of Pub. L. 93-153, the Congress gave GAO responsibility for insuring that the information required by the independent regulatory agencies is obtained with a minimum burden on business enterprises and that the information is not presently available from other sources within the Federal government.

GAO has concluded that a clearance of the proposed Form 40 cannot be issued at the present time. We are withholding clearance for reasons both of duplication and burden. We believe the problems of duplication can be easily resolved. Problems of burden are more complex and relate to the Federal Power Commission's inability to demonstrate that the compliance burden has been minimized, particularly for small respondents.

The Federal Power Commission has been advised that a revised Form 40, which will both meet the Commission's need for data and the statutory requirements regarding duplication and burden, will receive prompt consideration.

CARL F. BOGAR,
Assistant Director,
Regulatory Reports Review Group.

[FR Doc.75-17471 Filed 7-3-75;8:45 am]

GENERAL SERVICES ADMINISTRATION

[FPMR Temp. Reg. E-39]

ADP SCHEDULE CONTRACTS

Use in Acquisition of ADPE

1. *Purpose.* This regulation sets forth changes in the fiscal year 1976 (FY 76) ADP Schedule contract program and provides policy and procedures governing the acquisition of certain ADPE for utilization within the conterminous 48 States.

2. *Effective date.* This regulation is effective July 1, 1975.

3. *Expiration date.* This regulation expires June 30, 1976.

4. *Applicability.* The provisions of this regulation apply to all Federal agencies.

5. *Background.* On June 28, 1974, GSA issued FPMR Temporary Regulation E-32 which ensured maximum practicable competition in the procurement of ADPE by placing limitations on the use of ADP Schedule contracts. The December 31, 1974, expiration date of FPMR Temporary Regulation E-32 was extended to June 30, 1975, by Supplement 1 thereto.

6. *Definition of leased ADPE.* For the purpose of this regulation, all ADPE acquired under any plan (fixed term, extended term rental, or other such plans) offered under an ADP Schedule contract wherein payments are still due shall be considered to be leased ADPE.

7. *Competition.* GSA has determined that for FY 76 viable competition will exist in the marketplace for certain ADPE systems. Accordingly, use of FY 76 ADP Schedule contracts for either the lease or purchase of this equipment is subject to the limitations set forth in paragraph 8, below, and to the provisions of FPMR 101-32.302 and 101-32.303 with respect to the reutilization of excess leased ADPE acquired under such ADP Schedule contracts.

NOTE.—GSA will notify agencies as to the availability of competition for that ADPE referred to in 8a and c, below.

8. *Restrictions on use of ADP Schedule contracts.* Use of FY 76 ADP, Schedule contracts is subject to the limitation that except for minicomputers and those central processing units (CPU) for which the ADP Schedule purchase price of such equipment is not

more than $50,000 (regardless of the actual mode of acquisition), a specific delegation of procurement authority pursuant to FPMR 101–32.404 is required before an agency may:

a. Issue an order against an ADP Schedule contract to renew the lease of any CPU or ADPE system that includes a CPU when GSA has determined (as indicated in the note in 7, above) that viable competition exists in the marketplace for the CPU(s) in question; or

b. Place an order against an ADP Schedule contract for the initial acquisition of a CPU or an ADPE system that includes a CPU when GSA has determined (upon receipt of the agency procurement request) that viable competition exists in the marketplace for the CPU(s) in question; or

c. Convert from lease to purchase under an ADP Schedule contract any CPU or any specific make and model machine that can be cable-connected to that CPU when GSA has determined (as indicated in the note in 7, above) that viable competition exists in the marketplace for the ADPE in question.

9. *Effect on other issuances.* This regulation supplements and modifies the policies in FPMR 101–32.403 and 101–32.404 with respect to the procurement of ADPE, and it affects FPMR 101–32.302 and 101–32.303 with respect to the reutilization of excess leased ADPE acquired under ADP Schedule contracts. FPMR Temporary Regulation E–32 and Supplement 1 thereto are canceled.

DWIGHT A. INK,
Acting Administrator of General Services.

JUNE 24, 1975.

[FR Doc.75–17491 Filed 7–3–75;8:45 am]

[Federal Property Management Regs.; Temporary Reg. A–11; Supplement 1]

INCREASE IN MILEAGE ALLOWANCES FOR USE OF PRIVATELY OWNED AUTOMOBILES

Changes to Federal Travel Regulations

Correction

In FR Doc. 75–17174, appearing at page 27533 in the issue of Monday, June 30, make the following changes:

1. The citation in line two of column one on page 27534 should read, "40 FR 22617, May 23, 1975".

2. The word "set" should precede the last word in line three of column two on page 27534.

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 06/30/75 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202–395–4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, Application for Licensure Under Clinical Laboratories Act, 1967; CDC 3.602–1, CDC 3.602–2, CDC 3.602–3, CDC 3.602–4, CDC 3.602–6, CDC 3.601, CDC 3.639, CDC 3.676; on occasion, Clinical Laboratories Subject to CLIA 67; Caywood, D. P., 395–3443.

Health Resources Administration, Management Data Elements for Physician's Assistant Training Program Contracts—Reporting Requirements, HRABHM 0616; annually, physician's assistant training programs; Lowry, R. L., 395–3772.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Right To Read Financial and Performance Report, OF 361; semiannually, grant recipients; Lowry, R. L., 395–3772.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration, On-Site Employer Consultation Form Under Section 7(c)(1) and 21(c), OSH Act, OSHA–68; other (see SF–83); Establishments who have requested consultation; Caywood, D. P., 395–3443.

EXECUTIVE OFFICE OF THE PRESIDENT

Community Services Administration, Statement of CSA Grant, CSA–314; on occasion, Community action and limited purpose agency; Caywood, D. P., 395–3443.

EXTENSIONS

BUSINESS FIRMS

Economic Research Service, Survey of Rice Distribution—Millers and Repackagers; annually; business firms; Marsha Traynham, 395–4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Application for Federal Assistance (Nonconstruction Programs)—Instructions for Teacher Corps Program, OE 298; annually; Government agencies; Marsha Traynham, 395–4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75–17568 Filed 7–3–75;8:45 am]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance, Equal Employment Opportunity

LOS ANGELES FEDERAL EEO BID CONDITIONS

Notice of Extension of Part II

On June 30, 1970, the Department of Labor tentatively approved the Los Angeles Agreement on Minority Employment. Final approval of the Agreement was conditioned upon the development of goals which would provide significant and meaningful minority representation in the participating crafts within a reasonable time. However, acceptable goals for minority utilization were never submitted by the participating crafts. In the absence of an acceptable hometown plan the Office of Federal Contract Compliance issued Part II Federal EEO Bid Conditions on September 23, 1971. Part II of the Federal EEO Bid Conditions is intended to implement the provisions of Executive Order 11246, as amended, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal and Federally assisted construction contractors in the Los Angeles area. Inasmuch as final approval of the Los Angeles Agreement on Minority Employment was never given, all construction contractors performing work on non-exempt Federally involved projects have been subject to the requirements of Part II.

Part II of the Federal EEO Bid Conditions for the Los Angeles area expired on June 30, 1975. In order to ensure positive efforts toward the elimination of minority underutilization in the Los Angeles area construction industry, the establishment of a new Los Angeles Plan will be proposed and, such proposal will be published in the FEDERAL REGISTER prior to July 31, 1975. Due to the requirement that the proposed New Los Angeles Plan be published for comment for at least 30 days prior to promulgation as a final rule, Part II of the Federal EEO Bid Conditions is hereby extended until the proposed New Los Angeles Plan becomes effective.

Accordingly, Part II of the Federal EEO Bid Conditions issued September 23, 1971, must be included in all invitations or other solicitations for bids on nonexempt Federally-involved construction contracts in the Los Angeles area until the proposed New Los Angeles Plan becomes effective. All invitations and other solicitations for bids should be revised to reflect this extension by revising Part II of the Federal EEO Bid Conditions. The goals in Part II for the year ending June 30, 1975, will be applicable. The Federal EEO Bid Conditions are available for inspection in the OFCC area Office at the Federal Building, Room 4345, 300 North Los Angeles Street, Los Angeles, California 90012 and the Office of the Director, OFCC, Room N3402, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, D.C., this 30th day of June, 1975.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.75–17502 Filed 7–3–75;8:45 am]

REVISED PHILADELPHIA PLAN

Notice of Extension

Pursuant to Orders dated June 27, 1969, and September 23, 1969, the Department of Labor established the Revised Philadelphia Plan. The Revised Philadelphia Plan, as amended, is intended to implement the provisions of Executive Order 11246, as amended, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal and federally assisted construction contractors in the Philadelphia area, including Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, Pennsylvania. During the past year, the Department of Labor has endeavored to encourage the development of a voluntary hometown plan which would cover all of the construction trades in the Philadelphia area. Despite these efforts, it appears that a viable hometown plan is not forthcoming. Therefore, in order to ensure positive efforts toward the elimination of underutilization of minorities in the Philadelphia area construction industry, establishment of a New Philadelphia Plan will be proposed and such a proposal shall be published in the FEDERAL REGISTER prior to June 30, 1975, the expiration date of the current Revised Philadelphia Plan. Due to the requirement that the proposed New Philadelphia Plan be published for comment for at least thirty (30) days prior to promulgation as a final rule, the Revised Philadelphia Plan is hereby extended, as amended, until the proposed New Philadelphia Plan becomes effective.

Accordingly, Appendix A of the Revised Philadelphia Plan, issued February 26, 1974, must be included in all invitations or other solicitations for bids on federally-involved construction contracts for projects, the estimated total cost of which exceeds $500,000, in the Philadelphia area until the proposed New Philadelphia Plan becomes effective. All invitations and other solicitations for bids should be revised to reflect this extension by revising Appendix A. The goals in Appendix A for the final year of the Plan will be applicable. Appendix A of the Revised Philadelphia Plan is available for inspection in the OFCC Regional Office at the Gateway Building, Room 15434, 3535 Market Street, Philadelphia, Pennsylvania, 19104 and the Office of the Director, OFCC, Room N3402, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, D.C., this 30th day of June, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.75-17504 Filed 7-3-75;8:45 am]

NEW YORK PLAN FEDERAL EEO BID CONDITIONS

Notice of Extension of Part II

Pursuant to an Order dated August 11, 1971, the Office of Federal Contract Compliance approved the New York Plan and incorporated it by reference in Part I of the Federal EEO Bid Conditions issued for New York City. For those contractors and unions which declined or were ineligible to participate in the New York Plan, mandatory affirmative action requirements are set forth in Part II of the Federal EEO Bid Conditions. On November 30, 1974, the Director of the Office of Federal Contract Compliance issued a Memorandum to Heads of All Agencies in which he withdrew approval of the New York Plan and placed all participating contractors and unions under the requirements of Part II of the Federal EEO Bid Conditions.

Part II of the Federal EEO Bid Conditions is intended to implement the provisions of Executive Order 11246, as amended, and the rules and regulations issued pursuant thereto, requiring a program of equal employment opportunity by Federal and Federally assisted construction contractors in the City of New York. During the past year, the Department of Labor has endeavored to encourage the development of a voluntary hometown plan which would cover the City of New York construction industry. Despite these efforts, it appears that a viable hometown plan is not forthcoming. Therefore, in order to ensure positive efforts toward the elimination of underutilization of minorities in the City of New York construction industry, the establishment of the Revised New York Plan will be proposed and such proposal will be published in the FEDERAL REGISTER prior to July 1, 1975, the expiration date of the current Part II of the Federal EEO Bid Conditions. Due to the requirement that the proposed Revised New York Plan be published for comment for at least 30 days prior to promulgation as a final rule Part II of the Federal EEO Bid Conditions is hereby extended until the proposed Revised New York Plan becomes effective.

Accordingly, Part II of the Federal EEO Bid Conditions issued August 11, 1971, must be included in all invitations or other solicitations for bids on nonexempt Federally-involved construction contracts in the City of New York until the proposed Revised New York Plan becomes effective. All invitations and other solicitations for bids should be revised to reflect this extension by revising Part II of the Federal EEO Bid Conditions. The goals in Part II for the year ending July 1, 1975 will be applicable. The Federal EEO Bid Conditions are available for inspection in the OFCC Regional Office at the 1515 Broadway, Room 15434, New York, New York, and the Office of the Director, OFCC, Room N3402. 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 30th day of June, 1975.

JOHN T. DUNLOP,
Secretary of Labor.

BERNARD E. DELURY,
Assistant Secretary for Employment Standards.

PHILIP J. DAVIS,
Director, Office of Federal Contract Compliance.

[FR Doc.75-17503 Filed 7-3-75;8:45 am]

Office of the Secretary

[TA-W-62]

CONTROL DATA CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On June 24, 1975 the Department of Labor received a petition under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the Computer Memory Manufacturing Division, Casper, Wyoming of the Control Data Corporation. Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with computer components produced by Control Data Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 17, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., NW, Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of June 1975.

DOMINIC SORRENTINO,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-17508 Filed 7-3-75;8:45 am]

[TA-W-63]

MID-AMERICAN DAIRYMEN, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On June 24, 1975 the Department of Labor received a petition filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the Springfield, Missouri Corporate Office of the Mid-American Dairymen, Incorporated. Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with non-fat dry milk, cheese and butter produced by Mid-American Dairymen, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, July 17, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave., NW, Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of June 1975.

DOMINIC SORRENTINO,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-17509 Filed 7-3-75;8:45 am]

[TA-W-61]

WILSON SPORTING GOODS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On June 24, 1975 the Department of Labor received a petition filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Textile Workers of America, Local 232 on behalf of the workers and former workers of the Tullahoma, Tennessee Ball Plant of Wilson Sporting Goods Company. Accordingly, the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with baseballs and softballs produced by Wilson Sporting Goods Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than than July 17, 1975.

The petition filed in this case is available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd St. and Constitution Ave. NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 26th day of June 1975.

DOMINIC SORRENTINO,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc.75-17510 Filed 7-3-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 804]

ASSIGNMENT OF HEARINGS

JULY 1, 1975.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 139539 Sub 4, Afro-Urban Transportation, Inc., now assigned July 16, 1975 at New York, New York is postponed indefinitely.

MC 18088 Sub 55, Floyd & Beasley Transfer Company, Inc., now assigned September 23, 1975 at Montgomery, Alabama; will be held in Room 816, Aronov Building, 474 South Court Street.

MC 113362 Sub 282, Ellsworth Freight Lines, Inc., application dismissed.

MC 103191 Sub 49, The Geo. A. Rheman Co., Inc., now assigned July 28, 1975 at Columbia, South Carolina, is canceled and the application is dismissed.

MC 136168 Sub 4, Wilson Certified Express, Inc., now assigned September 16, 1975, at Omaha, Nebraska, is canceled and application dismissed.

MC 134612 Sub 2, Fast Motor Freight, Inc., now assigned July 1, 1975 at Washington, D.C.; hearing not called, application dismissed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-17517 Filed 7-3-75;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JULY 1, 1975.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before July 22, 1975.

FSA No. 43011—*Sulphur from Corpus Christi, Texas.* Filed by Southwestern Freight Bureau, Agent, (No. B-537), for interested rail carriers. Rates on sulphur, in carloads, as described in the application, from Corpus Christi, Texas, to specified points in official and southern territories.

Grounds for relief—Market competition.

Tariff—Supplement 57 to Southwestern Freight Bureau, Agent, tariff 102-A, I.C.C. No. 5077. Rates are published to become effective on August 1, 1975.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75-17520 Filed 7-3-75;8:45 am]

[Notice No. 20]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JULY 7, 1975.

Synopses of orders entered by the Motor Carrier Board of the Commission pur-

suant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before July 28, 1975. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–75720. By order of June 23, 1975, the Motor Carrier Board on reconsideration approved the transfer to Bay Area-Los Angeles Express, Inc., San Francisco, Calif., of the Certificate of Registration in No. MC 99296 (Sub-No. 1) issued December 4, 1964, to Alfred J. Olmo Drayage Co., a corporation, San Francisco, Calif., evidencing a right of the holder to engage in motor carrier transportation in interstate or foreign commerce corresponding in scope to the grant of authority in Decision No. 50867, as amended, issued by the Public Utilities Commission of California. Donald Murchison, 9454 Wilshire Boulevard, Beverly Hills, Calif. Attorney for applicants.

No. MC–FC–75765. By order of June 24, 1975, the Motor Carrier Board on reconsideration approved the transfer to Rogers Motor Lines, Inc., Great Meadows, N.J., of the operating rights in Certificates Nos. MC 108884 (Sub-No. 17), MC 108884 (Sub-No. 20), MC 108884 (Sub-No. 24), MC 108884 (Sub-No. 25), and MC 108884 (Sub-No. 27) issued July 13, 1971, January 17, 1973, January 17, 1974, April 25, 1975, and December 2, 1974, respectively, to Rogers Transfer, Inc., Great Meadows, N.J., authorizing the transportation of frozen prepared foods, in vehicles equipped with mechanical refrigeration, from South Hackensack, N.J., to South Portland, Maine, Salem, N.H., and White River Junction, Vt., and points in Connecticut, New York, and that part of Massachusetts on and west of U.S. Highway 5; frozen meat, in the same kind of vehicles, from Newark, N.J., and New York, N.Y., to Bangor and Portland, Maine, points in Connecticut, Rhode Island, and Massachusetts, and points in a described area of New Hampshire; food and foodstuffs (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft Foods Division of Kraftco Corporation at near Fogelsville, Pa., to all points in 12 eastern states; foodstuffs (except in bulk), in vehicles equipped with mechanical refrigeration, from Newburgh, N.Y., to all points in 16 eastern states; frozen imported meats, in vehicles equipped with mechanical refrigeration, from points within the New York, N.Y., Harbor area, Philadelphia, Pa., and Wilmington, Del., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and frozen foods, from the facilities of Banquet Foods Corporation at or near Wellston, Ohio, to all points in 11 eastern states and the District of Columbia. Bert Collins, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Registered Practitioner for applicants.

No. MC–FC–75789. By order of June 23, 1975, the Motor Carrier Board approved the transfer to Atlantic Northeastern Van & Storage, Inc., Monroeville, Pa., of Certificate No. MC 81086 issued by the Commission July 20, 1954, to Samuel A. Miller, Samuel A. Miller, Jr., and Robert K. Miller, Executors, and Samuel A. Miller, Jr., a partnership, doing business as Miller Red Line Transfer & Storage Co., Pittsburgh, Pa., authorizing the transportation of household goods, as defined by the Commission, between points in a specified part of Pennsylvania on the one hand, and, on the other, points in Connecticut, Delaware, Indiana, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Rhode Island, Virginia, West Virginia, Kentucky, and the District of Columbia. Paul R. Butler, Esquire, Attorney for Transferee, 1701 Law & Finance Building, Pittsburgh, PA 15219.

No. MC–FC–75796. By order entered June 23, 1975, the Motor Carrier Board approved the transfer to EconoLines, Inc., Omaha, Nebr., of the operating rights set forth in Certificate No. MC 110589 (Sub-No. 29), issued October 22, 1974, to J. E. Lammert Transfer, Inc., Grand Island, Nebr., authorizing the transportation of general commodities, with the usual exceptions, over specified routes, between Red Cloud, Nebr., and Hastings, Nebr., serving all intermediate points, and between Red Cloud, Nebr., and Smith Center, Kans., serving the intermediate points of Guide Rock, Nebr., Burr Oak and Lebanon, Kans., and the off-route points of Esbon and Mankoto, Kans. Roger W. Norris, P.O. Box 623, D.T.S., Omaha, Nebr. 68101 representative for transferee, and J. E. Lammert Transfer, Inc., P.O. Box 488, Grand Island, Nebr., transferor.

No. MC–FC–75914. By order entered June 23, 1975, the Motor Carrier Board approved the transfer to Hilling Moving & Storage, Inc. (Incorporated 1975), Richmond, Ind., of the operating rights set forth in Certificates Nos. MC 20847, MC 20847 (Sub-No. 1), and MC 20847 (Sub-No. 2), issued July 6, 1949, March 7, 1950, and January 17, 1967, respectively, to Hilling Moving and Storage, Inc. (Incorporated 1949), Richmond, Ind., authorizing the transportation of household goods, between specified points in Indiana, and Ohio, on the one hand, and, on the other, points in Indiana, Michigan, Ohio, Illinois, and Kentucky; and such merchandise as are ordinarily dealt in by retail stores and mail order houses, from Richmond, Ind., to points in Drake, Preble, and Butler Counties, Ohio. Donald W. Smith, 2465—One Indiana Square, Indianapolis, Indiana 46204, attorney for applicants.

No. MC–FC–75918. By order of June 23, 1975, the Motor Carrier Board approved the transfer to Schick Moving and Storage Company, a corporation, 2061 Ritchey Street, Santa Ana, Calif. 92705, of the operating rights in Certificate No. MC 4086 issued January 27, 1961, to Grace May Jump, Robert Lee Jump, and Leo L. Jump, a partnership, doing business as Wright Transfer Company, 2222 S.E. Bristol, Santa Ana, Calif. 92707, authorizing the transportation of household goods as defined by the Commission, between Santa Ana, Calif., on the one hand, and, on the other, points within 30 miles of Santa Ana.

No. MC–FC–75924. By order entered June 23, 1975, the Motor Carrier Board approved the transfer to William E. Beaumont and Joseph R. Beaumont, a partnership, doing business as Beaumont Trucking, Canonsburg, Pa., of the operating rights set forth in Permit No. MC 129793, issued November 29, 1968, to Charles Beaumont, Lawrence, Pa., authorizing the transportation of building materials (except cement and clay products), equipments, and supplies, household appliances, and furniture, between points in Washington County, Pa., on the one hand, and, on the other, points in that part of Ohio on and east of U.S. Highway 23 and points in that part of West Virginia on and north of U.S. Highway 33, restricted to a transportation service to be performed under a continuing contract, or contracts, with Z & L Builders Supplies, doing business as Woodcraft Industries and Z & L Lumber Co., of Atlasburg, Pa. Louis D. Cooper, 1101 Plaza Building, Pittsburgh, Pa. 15219, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75–17518 Filed 7–3–75;8:45 am]

[Notice No. 21]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 7, 1975.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–75954. By application filed June 27, 1975, G & R TRANSPORT, INC., 4703 Mayflower Ave., Wausau, WI 54401, seeks temporary authority to lease the operating rights of OSCAR C. RADKE, doing business as RADKE TRANSIT, 730 S. 17th Ave., Wausau, WI 54401, under section 210a(b). The transfer to G & R TRANSPORT, INC., of the operating rights of OSCAR C. RADKE, doing business as RADKE TRANSIT, is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75–17519 Filed 7–3–75;8:45 am]

federal register

MONDAY, JULY 7, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 130

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

SEX DISCRIMINATION IN HEALTH-RELATED TRAINING PROGRAMS

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 83—REGULATION FOR THE ADMINISTRATION AND ENFORCEMENT OF SECTIONS 799A AND 845 OF THE PUBLIC HEALTH SERVICE ACT

Pursuant to section 215(b) of the Public Health Service Act (42 U.S.C. 216(b)) (hereinafter sometimes referred to as PHSA) the Director of the Office for Civil Rights, with the approval of the Secretary of Health, Education, and Welfare, hereby gives notice that, on August 6, 1975, the FEDERAL REGISTER, revised Part 83 of Title 45 of the Code of Federal Regulations will become effective as set forth below. This revised regulation was published in the FEDERAL REGISTER for comment on Thursday, September 20, 1973.

This also constitutes notice that, on August 6, 1975, (1) HEW Form 590A (3/72)—"Explanation of HEW Form 590, Assurance of Compliance with Section 799A of Part H, Title VII, of the Public Health Service Act, and Section 845 of Part C, Title VIII, of the Public Health Service Act," and HEW Form 590C (6/72)—"Explanation of HEW Form 590, Assurance of Compliance with Section 799A of Part H, Title VII, of the Public Health Service Act—Addendum"—will no longer be in effect, (2) HEW Form 590 (3/72)—"Assurance of Compliance with Public Health Service Act Sections 799A and 845"—and HEW Form 590B (6/72)—"Assurance of Compliance with 45 CFR Part 83"—will be considered to be modified by the deletion of the second paragraphs of those forms since the subject therein covered is now treated by § 83.11(h) of the final regulation, and (3) any entity which has, before publication in final form of the revised Part 83, submitted HEW Form 590 or HEW Form 590B to the Director will be considered to have filed a satisfactory assurance of compliance with the revised Part 83 unless (i) that assurance is rejected in writing by the Director or (ii) the entity notifies the Director that it no longer intends to comply with its assurance.

This regulation is similar to, but separate from, the final regulation implementing title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), 45 CFR Part 86 published in the FEDERAL REGISTER on June 4, 1975, and scheduled to become effective July 21. Title IX provides that no person in the United States shall be excluded, on the basis of sex, from participation in, be denied the benefits of, or be subject to discrimination under any educational financial asistance except for several exemptions specifically provided in the legislation. The PHSA, on the other hand, prohibits the extension of Federal financial support under title VII and VIII of the PHSA to certain specific health training shcools and centers that fail to submit satisfactory assurances that they will not discriminate on the basis of sex in the admission of students to their health-related training programs.[1]

Since the legislation which this regulation implements is limited to assurances of nondiscriminatory admission, the regulation itself is somewhat narrower in scope than is the regulation implementing title IX. For example, the section on employment practices is less specific since only those employees who work directly with applicants or students are covered by these regulations, whereas the title IX regulation covers all employees working in connection with an education program or activity receiving Federal financial assistance.

SUBPART A

Subpart A of this regulation contains a statement of the purposes and objectives of this regulation (§ 83.1) and definitions of terms (§ 83.2). It provides for mandatory remedial action to correct past discrimination and for voluntary affirmative efforts to overcome the effects of conditions which resulted in limited participation in an entity's health training programs by members of one sex. The Subpart also includes a provision explaining coverage of the regulation and a provision indicating that the requirements of this regulation are independent of those imposed by or pursuant to title IX.

The purpose of Part 83 is to implement Pub. L. 92–157, the Comprehensive Health Manpower Training Act, and Pub. L. 92–158, the Nurse Training Act, which amend the Public Health Service Act to proscribe the extension of Federal support under titles VII and VIII thereof to any entity discriminating on the basis of sex in the admission of individuals to its training programs. The objective is to eliminate the use of sex as a criterion in the admissions process of health training programs and thereby encourage the maximum use of all human resources in meeting this country's needs for qualified health personnel.

The definition of the word "entity" as given in § 83.2(f) is necessary to the understanding of this regulation. An "entity" is a school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine or public health, as defined in section 724 of the Public Health Service Act; or a school of nursing as defined in section 843 of the Public Health Service Act; or a school or college of a training center for an allied health profession as defined by section 795 of the Act, or of another institution of undergraduate education which school or college can provide a training program. The important concept to be noted is that a training center for an allied health profession or another institution of undergraduate education will, in many instances, be part of an entire university or university system. However, only that school, college, or training center providing training programs receiving support under title VII or VIII is considered an entity for purposes of this regulation.

Section 83.3 requires an entity to take remedial action to overcome the effects of previous discrimination based on sex in any of its training programs. Section 83.3(b) permits, but does not require, affirmative action to overcome the effects of conditions which may have resulted in the limited participation by members of either sex.

Under § 83.4(a), if an entity receives any Federal support for any of its health-related training programs under title VII or VIII (hereinafter, "training programs") all of its training programs thereby become subject to this regulation. Under § 83.4(b), a Federally supported entity may not discriminate in the selection of students for its training programs. Further, it has a concomitant obligation not to discriminate after selection since such discrimination might deter persons of the sex discriminated against from applying for admission. In addition, if discrimination occurs in treatment of students admitted by a nondiscriminatory admissions process, the effect is to admit persons to different programs—one for men and one for women. Under § 83.4(d), an entity will be covered by this regulation for as long as it retains ownership, possession, or use of any real or personal property acquired in whole or in part with Federal financial support under either title VII or VIII of the Public Health Service Act. Under § 83.4(e), an entity may not transfer any real or personal property so acquired unless the transferee has submitted a satisfactory assurance under this regulation.

SUBPART B

Subpart B specifies the general obligation of an entity covered by this regulation and sets out the specific acts of discrimination proscribed. Under § 83.10, an entity must submit a satisfactory assurance that it will not discriminate on the basis of sex in the admission to its training programs and that an entity, if it has so discriminated in the past, may be required by the Director of the Office for Civil Rights to take specific remedial action in accordance with § 83.3(a) to eliminate the effects of that past discrimination.

The Department received several sets of public comments recommending that § 83.10 be modified to provide that assurances be submitted with a numerical and percentile breakdown, according to sex, of (a) persons presently participating in each level of a program, (b) the number of persons receiving financial aid and the amount of aid at each level and, (c) the total number of persons admitted to the first year of a program for the coming year. In addition, these comments proposed that an entity, when submitting

[1] Section 105 of the National Research Service Award Act of 1974, Pub. L. 93–348, amended title VII of the PHSA to exclude from coverage by its sex discrimination provisions until June 30, 1979, any medical school in the process of charging from an institution admitting only women to one which admits students without regard to sex and is carrying out such a transition in accordance with a plan approved by the Secretary. To the best of our knowledge, only one such institution exists.

an assurance be required to list any outstanding complaints of sex discrimination which exist against it under this regulation, title IX of the Education Amendments of 1972, title VII of the Civil Rights Act of 1964, or Executive Order 11246, and that the entity explain plans for recruiting students of an unrepresented sex or for remedying any disproportionate male or female representation. Although these comments were not incorporated into the final regulation as is presently being published, they are still under active consideration within the Department. The ideas expressed in these comments transcend this Public Health regulation and apply equally to assurances submitted under title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973 and title VI of the Civil Rights Act of 1964. The Department is presently considering these comments in this greater context.

The Department received several recommendations during the comment period that § 83.11(a), "Specific discriminatory acts prohibited," be amended to incorporate additional langauge patterned after the draft regulation implementing title IX of the Education Amendments of 1972 which provides more detail as to prohibited acts than did the drafts of this regulation. As a consequence, additional paragraphs ((a), (b), (c), and (d)) have been added to this final regulation. Paragraph (a) as originally proposed proscribed an entity from giving preference on the basis of sex to one individual by ranking on the basis of sex and from otherwise treating one individual differently from another. Paragraph (a) is now patterned after the final title IX regulation and paragraph (b) includes the language of the original paragraph (a) but also prohibits applying numerical limitations upon the number or proportion of persons of either sex that may be admitted. A new paragraph 83.11(c) now specifically prohibits the administration of admissions tests or criteria which adversely affect any person on the basis of sex, unless such tests or criteria are validated as predicting successful completion of the training program in question. A new paragraph 83.11(d) proscribes the use of marital or parental status to determine admission or in providing financial aid or any other benefit or service. In general, pregnancy, childbirth, termination of pregnancy, and any temporary disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom must be treated in the same manner as any other temporary disability or physical condition. A new paragraph 83.11(e) has been added which prohibits the giving of preference to applicants on the basis of attendance at another educational institution which admits only or predominantly one sex if the giving of such a preference has the effect of discriminating.

Paragraph 83.11(f) prohibits the segregation of sexes in classrooms and courses and the provision of separate or different benefits or services based on sex. It does however allow entities to administer single-sex scholarships and other forms of financial aid which have been established by wills, trusts, or other similar legal instruments, provided that the overall effect of the award of such sex-restricted financial aid does not discriminate on the basis of sex. This provision parallels the provision included in the final title IX regulation on the same subject. In addition, paragraph 83.11(g) has been clarified to specify that the regulation does not prohibit the segregation of sexes in providing housing. However, housing provided by an entity to students of one sex, when compared to that provided to students of the other sex, shall be proportionate in quantity and comparable in quality and cost. Under § 83.11 (h), if an entity aids participation, by any applicant for or student enrolled in any of its training programs, in any program or activity or another organization, the entity must develop and implement a procedure to assure that such an organization does not discriminate against such applicants or students on the basis of sex in violation of this regulation and does not aid such participation. If such an entity cannot obtain a satisfactory assurance as to the organization's nondiscrimination, the entity will be required to cease aiding its applicants or students in participation in the programs or activities of the organization and must curtail all other assistance such as the advertising of the program.

Pursuant to public comment, paragraph 83.11(i) has been modified to specify areas in which employment discrimination is prohibited. This modification makes the regulation more consistent with the final title IX regulation. However, it is reiterated that this regulation applies only to the employment practice of an entity with respect to staff who work directly with applicants for or students enrolled in any of its training programs. This coverage differs from that included in the final title IX regulation since the statutory language of title IX is not limited to admissions as is the language in the Public Health Service Act, and the legislative history of title IX demonstrates clear congressional intent to cover employment. The PHSA sections, however, are limited to admissions and those aspects of an entity's operation which would affect admissions. Thus, in an interpretation analogous to this Department's treatment of employment of faculty and staff under title VI of the Civil Rights Act of 1964, employment is included within the scope of this regulation to the extent the effects of employment discrimination would create or reinforce discrimination against applicants and students. See *Singleton* v. *Jackson Municipal Separate School District,* 419 F.2d 1211 (5th Cir. 1969); cert. denied, 396 U.S. 290 (1970).

Under § 83.12, a Federally supported entity must make comparable efforts to recruit members of each sex and shall not recruit exclusively or primarily at an institution which admits only members of one sex, unless it can be demonstrated that such action does not have the effect of discriminating on the basis of sex in the selection for a training program. In addition, adequate publication must be given to an entity's policy of nondiscrimination on the basis of sex.

SUBPART C

Subpart C as it appeared in the proposed regulation has been removed. Instead, for the purposes of implementing this Part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to sections 799A and 845, title IX, title VI, and other civil rights authorities administered by the Department, the Department has incorporated into this Part by reference the current procedural provisions applicable to title VI of the Civil Rights Act of 1964. These provisions may be found at 45 CFR 80.6–80.11 and 45 CFR Part 81.

The Secretary has chosen to adopt the title VI procedures for use during the interim period between the effective date of this regulation and effectiveness of the final consolidated procedural regulation to simplify enforcement during that time and to avoid applying a different procedure for enforcement of requirements concerning discrimination based on race, color, or national origin from those based on sex. The Department published simultaneously with the final title IX regulation, a proposed consolidated procedural regulation which will apply to most of the Department's civil rights enforcement activities. Comments on that proposal are solicited, as provided in the notice of proposed rulemaking, for 45 days. (40 FR 24148, June 4, 1975).

Effective date. As previously stated, this revised regulation will become effective August 6, 1975.

Dated: June 4, 1975.

PETER E. HOLMES,
Director, Office for Civil Rights.

Approved: June 27, 1975.

CASPAR W. WEINBERGER,
Secretary, Health, Education, and Welfare.

Subpart A—Purposes; Definitions; Coverage

Subpart B—Discrimination in Admissions Prohibited

Subpart C—Procedures [Interim]

AUTHORITY: (Sec. 215(b), Public Health Service Act (42 U.S.C. 216(b)).)

Subpart A—Purposes; Definitions; Coverage

§ 83.1 Purposes.

(a) The purposes of this Part are (1) to effectuate the provisions of sections 799A and 845 of the Public Health Service Act, which forbid the extension of Federal support under title VII or VIII of that Act to any entity of the types described in those sections unless that entity submits to the Secretary of Health, Education, and Welfare an assurance satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs, and (2) to implement the policy of the Secretary that no Federal support will be extended under those titles to any other entity unless that entity submits to the Secretary an assurance satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs.

(b) The objective of this Part is to abolish use of sex as a criterion in the admission of individuals to all training programs operated by an entity which receives support under title VII or VIII of the Act, and thereby to foster maximum use of all available human resources in meeting the Nation's needs for qualified health personnel.

§ 83.2 Definitions.

As used in this Part the term—

(a) "Act" means the Public Health Service Act.

(b) "Administrative law judge" means a person appointed by the Reviewing Authority to preside over a hearing held under this Part.

(c) "Assurance commitment clause" means a clause in an invitation for a contract offer extended by the Federal Government under title VII or VIII of the Act which, when executed by an entity as part of such offer, becomes, upon acceptance of such offer by the Federal Government, a contractual obligation of such entity to comply with its assurance submitted to the Director under this Part.

(d) "Department" means the Department of Health, Education, and Welfare.

(e) "Director" means the Director of the Office for Civil Rights of the Department.

(f) "Entity" means (1) a school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, school of podiatry, school of veterinary medicine, or school of public health, as defined by section 724 of the Act;

(2) A school of nursing, as defined by section 843 of the Act;

(3) A school or college of a training center for an allied health profession, as defined by section 795 of the Act, or of another institution of undergraduate education which school or college can provide a training program;

(4) An affiliated hospital, as defined by section 724 or 795 of the Act; and

(5) Any other institution, organization, consortium, or agency which is eligible to receive Federal support.

(g) "Federal support" means assistance extended after November 18, 1971, under title VII or VIII of the Act to an entity by means of a grant to, a contract with, or a loan guarantee or interest subsidy payment made on behalf of, such entity.

(h) "Federally supported entity" means an entity which receives Federal support.

(i) "Reviewing authority" means that component of the Department to which the Secretary delegates authority to review the decision of an administrative law judge in a proceeding arising under this Part.

(j) "Secretary" means the Secretary of Health, Education, and Welfare.

(k) "Training program" means a program of training described by section 724(4) of the Act, a program of education described by, or specified by regulations pursuant to, section 795(1) of the Act, a program of education described by section 843(c), 843(d), or 843(e) of the Act, and a program leading to any license or certification requisite to the practice of a health profession for which a degree specified in any such section is granted.

§ 83.3 Remedial and affirmative actions.

(a) *Remedial action.* If the Director finds that an entity has discriminated against persons on the basis of sex in any of its training programs, such entity shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in a training program, an entity may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex.

§ 83.4 Coverage.

(a) If an entity receives Federal support for any of its training programs, all of its training programs thereby become subject to this Part.

(b) The obligation imposed by this Part on a Federally supported entity not to discriminate on the basis of sex in the admission of individuals to a training program includes not only the obligation not to discriminate on such basis in the selection of individuals for such program, but also the obligation not to discriminate on such basis against individuals after their selection for such program.

(c) The obligation imposed by this Part on a Federally supported entity not to discriminate on the basis of sex against an individual who is an applicant for, or is enrolled in, a training program is applicable to the same extent to the actions of such entity with respect to an applicant for, or a student enrolled in, an undergraduate program of education of such entity if individuals enrolled in such program must complete all or a part of such programs to be eligible for admission to an undergraduate training program of such entity.

(d) An entity shall not discriminate on the basis of sex in violation of this Part for as long as such entity receives or benefits from Federal support. For purposes of the preceding sentence, an entity shall be deemed to continue to receive or benefit from Federal support for as long as it retains ownership, possession, or use of either real or personal property and which was acquired in whole or in part with Federal support. If an entity receives value for property which was acquired in whole or in part with Federal support and such value is applied toward the acquisition of other property, such entity shall be deemed to continue to receive or benefit from such support for as long as such entity retains ownership, use, or possession of such other property.

(e) An entity shall not transfer property which was acquired, constructed, altered, repaired, expanded, or renovated in whole or in part with Federal support unless the agency, organization, or individual to whom such property is to be transferred has submitted to the Director, and he or she has found satisfactory, an assurance of compliance with this Part. The preceding sentence shall not apply with respect to any real or personal property for which payments have been recaptured by the United States under title VII or VIII of the Act, with respect to any other property for which the transferring entity has refunded to the Federal Government the Federal share of the fair market value of such property, or with respect to any personal property which has only scrap value to both the entity and the agency, organization or individual to which the property is to be transferred.

§ 83.5 Effect of title IX of the Education Amendments of 1972.

The obligations imposed by this Part are independent of obligations imposed by or pursuant to title IX of the Education Amendments of 1972.

§§ 83.6—83.9 [Reserved.]

Subpart B—Discrimination in Admissions Prohibited

§ 83.10 General obligations.

(a) *Eligibility for support.* No entity will be provided Federal support unless such entity has furnished the Director assurances satisfactory to him or her that it will not discriminate on the basis of sex, in violation of this Part, in the admission of individuals to each of its training programs.

(b) *Elminating the effects of discrimination.* An assurance of compliance with this Part will not be satisfactory to the Director if the entity submitting such assurance fails to take whatever remedial action in accordance with section 83.3(a) that is necessary for such entity to eliminate the effects of any discrimination on the basis of sex in the admission of individuals to its training programs that such entity practiced prior to the submission to the Director of such assurance, or practices at the time of or subsequent to such submission. The Director may require such entity, as a condition to determining that its assurance is, or remains, satisfactory, to take

specific actions, or to submit to him or her specific information, bearing upon compliance with this Part.

§ 83.11 Discriminatory acts prohibited.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other training program or activity operated by an entity

(b) *Discrimination in selection.* In determining whether an individual satisfies any enrollment, eligibility, or other condition for selection for a training program, a Federally supported entity shall not:

(1) on the basis of sex, given preference to one individual over another by ranking applicants on such basis, or otherwise give such preference; or

(2) apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(3) otherwise treat one individual differently from another on the basis of sex.

(c) *Testing.* A Federally supported entity shall not administer or operate any test or use any criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown validly to predict success in the training program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(d) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, in providing financal aid or any other benefit, an entity to which this Subpart applies:

(1) shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) shall treat pregnancy, childbirth, termination of pregnancy and any temporary disabilities related to or resulting from pregnancy, childbirth, termination of pregnancy or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss," or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this Part.

(e) *Preference to students from other institutions in admission.* An entity shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this Part.

(f) *Discrimination in the provision of benefits and services.* (1) *General.* Except as otherwise provided in this Part in providing financial aid or any other benefit, or in providing any service, to an applicant for a training program or to a student enrolled in such program, no Federally supported entity shall on the basis of sex:

(i) treat one individual differently from another in determining whether such individual satisfies any requirement or condition for the provision of such benefit or service;

(ii) provide a different benefit or service or provide a benefit or a service in a different manner;

(iii) deny an individual any such benefit or service;

(iv) subject an individual to separate treatment or rules of behavior;

(v) discriminate against any individual by assisting an agency, organization, or individual in providing, in a manner which discriminates on the basis of sex, a benefit or service to applicants for or students enrolled in a training program; or

(vi) otherwise limit any individual in the enjoyment of any right, privilege, advantage, or opportunity.

(2) *Financial aid established by certain legal instruments.* (i) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein: *Provided,* That the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(ii) To ensure nondiscriminatory awards of assistance as required in paragraph (f) (2) (i) of this section, recipients shall develop and use procedures under which:

(A) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(B) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (f) (2) (ii) (A) of this section; and

(C) No student is denied the award for which he or she was selected under paragraph (f) (2) (ii) (A) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(g) *Housing.* (1) An entity shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this subsection (including housing provided only to married students).

(2) An entity may provide separate housing on the basis of sex.

(3) Housing provided by an entity to students of one sex, when compared to that provided to students of the other sex, shall be as a whole: (i) Proportionate in quantity to the number of students of that sex applying for such housing; and (ii) comparable in quality and cost to the student.

(4) An entity shall not on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(5) An entity which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take reasonable action to ensure that such housing is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. An entity may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(h) *Inter-institutional programs.* If a Federally supported entity aids participation, by any applicant for or student enrolled in any of its training programs, in any program or activity of another organization or agency, such entity shall:

(1) Develop and implement a procedure to assure itself that such organization or agency takes no action with respect to such applicants or students which this Part would prohibit such entity from taking; and

(2) Not aid such participation if such organization or agency takes such action.

(i) *Discrimination in employment prohibited.* A Federally supported entity shall not discriminate on the basis of sex in employment practices relating to its professional and other staff who work directly with applicants for or students enrolled in any of its training programs. The provisions of this Subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, pregnancy leave, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 83.12 Recruitment.

(a) *Comparable recruitment.* A Federally supported entity shall, with respect to each of its training programs, make comparable efforts to recruit members of each sex in the geographic area from which such entity attracts its students. A Federally supported entity shall not recruit for any of its training programs exclusively or primarily at organizations or agencies which admit as members or students, or which provide a service for, only members of one sex unless such entity can demonstrate that such action is part of a recruitment program which does not have the effect of discriminating on the basis of sex in selection for a training program.

(b) *Recruitment practices.* A Federally supported entity shall:

(1) Prominently include a statement of its policy of nondiscrimination on the basis of sex in each announcement, bulletin, catalogue, or application form which describes the training program of such entity or is used in connection with the recruitment of employees who will work directly with applicants for or students enrolled in a training program;

(2) Distribute without discrimination on the basis of sex any announecements, bulletins, catalogues, or other materials used in connection with the recruitment of students for a training program or employees who will work directly with applicants for such program or such students; and

(3) Apprise each of its recruitment representatives of its policy of nondiscrimination on the basis of sex, and require such representatives to adhere to such policy.

§ 83.13 State law and licensure requirements.

The obligation of an entity to comply with this Part is not obviated or alleviated by any State or local law which would render an applicant for or student enrolled in a training program ineligible on the basis of sex for any license or certificate requisite to the practice of the health profession for which such applicant seeks, or student pursues, training.

§ 83.14 Development and dissemination of nondiscrimination policy.

(a) A Federally supported entity shall develop a written policy statement of nondiscrimination on the basis of sex, in accordance with this Part, and shall implement specific and continuing steps to publicize such statement to applicants for admission or employment, students, employees, and sources of referral of applicants for admission or employment.

(b) Each Federally supported entity shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalogue, and application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees who work directly with students and applicants for admission.

(c) A Federally supported entity shall not use or distribute a publication of the type described in this section which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this Part.

§ 83.15 Designation by entity of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A Federally supported entity shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this Part, including any investigation of any complaint communicated to such entity alleging its noncompliance with this Part or alleging any action which would be prohibited by this Part. The entity shall notify all of its students and employees who work directly with students and applicants for admission of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of entity.* A Federally supported entity shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this Part. Such procedures shall be in writing and available to all present and prospective students and employees.

§§ 83.16 through 83.19 [Reserved.]

Subpart C—Procedures [Interim]

§ 83.20 Interim procedures.

For the purposes of implementing this Part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to sections 799A and 845 of the Act and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80.6 through 80.11 and 45 CFR Part 81.

[FR Doc.75-17458 Filed 7-3-75;8:45 am]

federal register

MONDAY, JULY 7, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 130

PART III

FEDERAL ELECTION COMMISSION

Federal Election Campaign Act

■

Complaint Procedure, Comment Period, and Public Records Availability

Title 11—Federal Elections

CHAPTER II—FEDERAL ELECTION COMMISSION

[Notice 1975–9]

INTERIM GUIDELINE: COMPLAINT PROCEDURE

1. *Filing.* Any person who believes a violation of the Federal Election Campaign Act, as amended, 2 U.S.C. section 431, et seq., or of sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18, United States Code, has occurred may file a complaint with the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463.

2. *Form of complaint.* There is no prescribed form for a complaint, but all complaints must be typewritten or handwritten legibly in ink. The person making the complaint must sign the complaint, the complaint must be verified by oath or affirmation of such person taken before an officer authorized to administer oaths, and include his or her address and phone number in the complaint. A complaint shall name the person complained against (respondent), describe in detail the alleged violation or violations and shall be submitted together with copies of evidentiary material available to the complainant.

3. *Notification of respondent.* The Commission shall send a copy of the complaint to the respondent within a reasonable time after the complaint is received. Such notification of the respondent shall not be released to the public unless and until written permission of the respondent is expressly given.

4. *Reply by respondent.* The respondent will normally be given ten (10) days after receipt in which to respond in writing to the allegations in the complaint except where, in the judgment of the Commission, a shorter or longer period of time is necessary. The response to the complaint shall be addressed to the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463. The Commission shall send a copy of the response to the complainant within a reasonable time. The response must be typewritten or handwritten legibly in ink. The respondent or the authorized representative thereof shall sign the response and the response shall be verified by the oath or affirmation of such person taken before an officer authorized to administer oaths.

5. *Exchange of information.* The Commission shall receive all documents and evidence submitted by the complainant and respondent and shall facilitate the exchange of such information by sending copies to the parties within a reasonable time.

6. *Investigations.* The Staff Director and the General Counsel shall proceed to direct the investigation of all duly filed complaints. A duly filed complaint is one which substantially complies with the form described by paragraph 2 above, is within the jurisdiction of the Commission and contains allegations of fact which, if proved, would constitute a violation of law. Investigations shall be conducted expeditiously and shall include an investigation of any reports and statements filed by the complainant, if the complainant is a candidate. Such investigations shall not be made public by the Commission or any other person without the written consent of the person under investigation.

7. *Hearings.* At the time the Commission notifies the respondent that a complaint has been filed, it shall notify the respondent that the respondent may request a hearing. The Commission will determine the manner and procedure for such hearings.

Date: July 1, 1975.

THOMAS B. CURTIS,
Chairman, for the
Federal Election Commission.

[FR Doc.75–17527 Filed 7–3–75;8:45 am]

FEDERAL ELECTION COMMISSION

[11 CFR Ch. II]

[Notice 1975–8]

IMPLEMENTATION OF FEDERAL ELECTION CAMPAIGN ACT

Extension of Time To Comment on Proposed Rulemaking

The time period within which written comments concerning any part of the notice of proposed rulemaking on the implementation of the Federal Election Campaign Act (Notice 1975–2, 40 FR 23833, June 2, 1975) will be received by the Federal Election Commission is extended to July 15, 1975.

Dated: July 1, 1975.

THOMAS B. CURTIS,
Chairman, for the
Federal Election Commission.

[FR Doc.75–17528 Filed 7–3–75;8:45 am]

[Notice 1975–10]

PUBLIC RECORDS AVAILABILITY

The purpose of this announcement is to inform the public of the methods by which the Commission is presently making available for public inspection and for copying the information which the law requires to be made available. Sections 302–308 of the Federal Election Campaign Act of 1971, Public Law 92–225, as amended by sections 202, 203, 204, 206, 208 and 209 of The Federal Election Campaign Act Amendments of 1974, Public Law 93–443, provide that statements of organization of political committees, reports of receipts and expenditures of political committees and candidates, reports on presidential convention financing, other expenditure reports, advisory opinions, statements relating to Presidential Nominating Convention Fund provisions, and other information relating to financing of Federal elections shall come under the purview of the Federal Election Commission. Some of the aforementioned information was formerly required to be submitted to the Secretary of the Senate, the Clerk of the House, or the Comptroller General of the United States under Public Law 92–225. Public Law 93–443 provides that all such information shall either be filed with, provided to, or maintained by the Federal Election Commission.

The following guidelines shall apply to inspection and copying of the Commission's public records:

(a) Inquiries concerning the records available at the Commission's Public Records Division may be made in person, by mail, or by telephone. Inquiries should be directed to: Public Records Division, Federal Election Commission, 1325 K Street, NW, Washington, D.C. 20463 (Telephone 202–382–7012). The Public Records Division is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m. Extended hours may be provided for by the Commission to meet public needs.

(b) Requests for inspection of Commission records may be made in person at the time and place stated in paragraph (a). Requests for copies of records may be made in person at the time and place stated in paragraph (a) or by mail directed to the Public Records Division.

(c) Each request for Commission records or copies shall describe the records sought with sufficient specificity with respect to names, dates, and subject matter to permit the records to be located among the records maintained by or for the Commission. A person who has requested Commission records or copies will be promptly advised if the records cannot be located on the basis of the description given and informed that further identifying information must be provided before the request can be satisfied.

(d) A search fee (Appendix to this announcement) will be charged when more than one-half hour of work is devoted to locating and making records available for inspection or for copying. No search fee will be charged if records adequately described cannot be located within a reasonable time. The Public Records Division shall promptly notify a requesting person if records adequately described cannot be located after a reasonable search. If such person requests and authorizes the search to continue, a search fee shall apply to time thereafter spent searching for the records.

(e) A current schedule of fees for record services, including locating and making records available, copying, and authentication, appears in the Appendix to this Announcement. Copies of the current schedule of fees also may be obtained upon request made in person, by telephone, or by mail from the Public Records Division.

(f) Upon receiving a request for inspection or copying of records, the Public Records Division shall promptly notify the requesting person of the estimated cost, if applicable, of locating and making the records available, of copying, and of any requested authentication. Only after receiving (1) authorization from the person requesting such services and (2) full payment in advance, if applicable, shall the Public Records Division proceed to fulfill a request for inspection or copying of records.

(g) The time actually required for locating and making records available for inspection or for copying in order to fulfill a request may exceed the amount of time estimated and paid for. In such circumstances, no work will be done that will result in fees beyond the amount estimated and paid for without further authorization from the person requesting the records or copies.

(h) In addition to any other fees or charges which may apply, a fee will be charged for record authentication as provided in the Commission's current schedule of fees. Authentication shall include an attestation that the document copied is a true copy of the original and a certification that the person who attests is in legal custody of the document. The Commission seal shall be affixed to such document.

(i) Copies of public records filed with or retained by the Commission, or portions thereof, will be provided subject to fees set forth in the Commission's current schedule of fees.

(j) Requested records shall be furnished without charge or at reduced charge whenever it shall be determined by the Commission that a waiver or reduction of the fee is in the public interest. Requests for a waiver or reduction of fees may be submitted with the original request for records and may state such facts as may be considered appropriate and necessary.

Any interested person or organization is invited to submit written comments to the Federal Election Commission concerning the manner and form by which public documents should be made available to the general public. Comments could include those relating to easy access filing systems, the use of photocopying devices, microfilm, microfiche, or any other retrieval systems. Comments should be mailed to: Federal Election Commission, Rulemaking Section, 1325 K Street, NW., Washington, D.C. 20463.

Dated: July 1, 1975.

THOMAS B. CURTIS,
Chairman, for the
Federal Election Commission.

APPENDIX

SCHEDULE OF FEES FOR RECORD SERVICES

Locating and making available records requested for inspection or copying (including overhead costs). First one-half hour: No fee. Each additional one-half hour or fraction thereof: $2.50.

Authentication with Commission Seal (in addition to other fees, if any). Price per authentication: $2.00.

Facsimile Copies of Documents. Price per page: $.10.

Full payment for the above services shall be made in advance of records or copies being made available. Payments must be by check or money order made payable to: "Treasurer of the United States". Mailed payments must be addressed to: Director, Public Records Division, Federal Election Commission, 1325 K Street, NW, Washington, D.C. 20463.

[FR Doc.75–17529 Filed 7–3–75;8:45 am]

federal register

MONDAY, JULY 7, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 130

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

DRUG LABELING

Failure to Reveal Material Facts; Labeling of Oral Hypoglycemic Drugs

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 75N–0072]

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

Labeling; Failure To Reveal Material Facts

In the FEDERAL REGISTER of September 16, 1974 (39 FR 33229), the Commissioner of Food and Drugs proposed a revision of § 1.3 (21 CFR 1.3), which deals with the circumstances under which a difference of opinion among experts as to the truth of a representation made in labeling must be revealed in such labeling in order to prevent such labeling from being misleading. The proposed revision was prompted by the opinion rendered by the United States Court of Appeals for the First Circuit in *Bradley* v. *Weinberger*, 483 F. 2d 410 (1st Cir. 1973), which directed that the Commissioner consider this regulation in light of the statutory requirements for substantial evidence of effectiveness for new drugs added to the Federal Food, Drug, and Cosmetic Act by the Drug Amendments of 1962 and in relation to the misbranding provisions of the act. The Commissioner is issuing a final regulation on this matter, effective August 6, 1975.

Forty-four comments were received, from individual physicians, food and drug firms and trade associations, the Committee on the Care of the Diabetic which had initiated the Bradley litigation, and the Department of Social Services of the State of New York. The comments received and the Commissioner's conclusions are as follows.

1. Two comments pointed out that the proposal erroneously included the term "misbranded" rather than "misleading" in § 1.3(a).

The Commissioner concurs and has revised the final regulation accordingly.

2. Comments contended that proposed § 1.3(a) exceeded the agency's authority granted under section 201(n) of the act by establishing a per se offense if it is shown that the labeling fails to disclose material facts. The comments contended that the statute also requires that, for a violation to occur, the omission of the particular material facts must also be shown to be misleading. It was contended that the extent of omissions of material fact may properly be taken into account in evaluating product labeling, and that the Bradley case explicitly anticipated the exercise of administrative discretion. The comments argued that the regulation reflects an inflexible approach whereas the law was designed to express a flexible approach.

These comments construe too narrowly the applicable statutory scheme. The act provides that a food, drug, device, or cosmetic is misbranded if its labeling is false or misleading in any particular. The courts have uniformly held that a single misleading representation is sufficient to render a product misbranded. The phrase "among other things" contained in section 201(n) is not a limit upon the statutory standard and does not require that there must be "other things" that are misleading in a product's labeling before it can be deemed misbranded. The courts have also recognized that partial or half-truths may render labeling misleading in violation of the act. Once it is determined that a material fact is omitted from a product's labeling, it is not necessary to inquire further into whether the affirmative representations made in the labeling are otherwise false or misleading.

The Commissioner also notes that section 201(n) of the act is not merely discretionary, since it provides that omissions of material fact "shall" be considered in determining whether product labeling is misleading. See *Research Laboratories, Inc.* v. *United States*, 167 F. 2d 410 (9th Cir. 1948), cert. denied, 335 U.S. 843 (1948).

This does not mean, however, that any omission of fact will render a product misbranded. In determining whether labeling is misleading because of a failure to disclose some fact, section 201(n) specifies that the fact omitted must be "material". Trivial or insignificant facts about a product, such as the date of its invention, are not material. Common sense and an appropriate regard for the right of consumers to be informed about the products they buy will guide the Commissioner's determinations of what facts about a product are material.

3. A comment suggested that § 1.3(a)(1) be revised to make it clear that each piece of labeling must be considered on its own, so that the contents of one piece of labeling will not be regarded as requiring affirmative disclosure of information in a subsequent piece of labeling for a different use.

The Commissioner advises that each piece of labeling will be subject to individual evaluation. The Commissioner concludes that this interpretation is inherent in the regulation as worded, and therefore that no change is warranted.

4. One comment stated that § 1.3 is inconsistent with recent Food and Drug Administration regulations governing nutrition labeling. The comment contended that the affirmative requirements of § 1.17 with respect to nutrition labeling prohibit the inclusion of certain significant information, resulting in the failure to reveal material facts.

The Commissioner does not agree with this comment. Section 1.17 was specifically proposed and promulgated, with ample time for public comment on two separate occasions, to include all significant and material information relating to nutrition. The Commissioner believes that no material facts are excluded. Any interested person may petition the Food and Drug Administration to amend § 1.17 to permit disclosure of material facts that he believes are presently excluded.

5. Two comments questioned inclusion of foods in proposed § 1.3, pointing out that the major focus of the preamble dealt with drug warnings. The comments suggested that, where safety is not the issue, existing food labeling regulations adequately control failure to reveal material facts, and therefore that food should be excluded from the final regulation.

The Commissioner points out that section 201(n) of the act applies to all articles within the jurisdiction of the Food and Drug Administration, including food, and that section 403(a) provides that food labeling shall not be false or misleading in any particular. The Commissioner has, on prior occasions, issued regulations pursuant to section 201(n) of the act affecting food, e.g., § 1.17 relating to nutrition labeling and Part 102 dealing with food names. In particular, food warnings have also been required pursuant to this section, as published in the FEDERAL REGISTER of March 3, 1975 (40 FR 8912). Accordingly, the Commissioner concludes that it would be inappropriate to exempt food from the provisions of § 1.3.

6. A comment contended that only section 201(n) of the act can require affirmative disclosure, and that the Food and Drug Administration cannot issue a regulation under section 701(a) of the act requiring such affirmative disclosure. The comment therefore requested that § 1.3(b) be revised to state that affirmative disclosure is required pursuant to the act, not "pursuant to paragraph (a)." Another comment asked whether the regulations are intended to be interpretive or substantive.

The Commissioner does not agree with the first of these comments. The authority to require affirmative disclosure rests on sections 201(n), 403(a), 502(a), and 602(a) of the act. Section 701(a) of the act explicitly authorizes the Commissioner to issue authoritative regulations, having the full force and effect of law, to implement the other provisions of the act. See *The National Nutritional Foods Association and Solgar Co., Inc.* v. *Weinberger*, 512 F. 2d 688 (2d Cir. 1975); *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621–625 (1973); *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973); *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 151–152 (1967); *Ciba-Geigy Co.* v. *Richardson*, 446 F. 2d 466, 468 (2d Cir. 1971); and *Mourning* v. *Family Publications Services, Inc.*, 411 U.S. 356, 369 (1973).

Accordingly, the Commissioner concludes that a regulation issued pursuant to section 701(a), if upheld upon court review, may lawfully require affirmative disclosure in accordance with the statute. There is therefore no need for a revision of § 1.3(b) in this respect.

7. A comment objected to use of the term "permit or require" in § 1.3(c) on the ground that it is ambiguous. The comment suggested that this phrase could be construed to mean that the proposed regulation itself neither permits nor requires opinion statements, but rather leaves that decision to the discretion of each manufacturer. It was also suggested that the words "or require" are surplusage and should be deleted.

The Commissioner agrees that the words "or require" are surplusage and accordingly has deleted them from the final regulation.

8. Comments expressed concern that the proposed revision of § 1.3(c) would restrict the free expression of honest and valid scientific opinion. It was contended that there are and will be many areas of medical practice where controversy exists and that, in such cases, complete communication of such controversy enhances the physician's knowledge and decision-making process. One comment opposed the proposed revision of § 1.3(c) on the ground that it would require a one-sided viewpoint in labeling and that physicians "will be virtually told what to think, believe, and do." It was contended that physicians must be free to draw their own conclusions from facts presented in drug labeling.

The Commissioner concludes that these comments do not accurately reflect the role Congress established for drug labeling in the Federal Food, Drug, and Cosmetic Act. As was discussed fully in the preamble to proposal, the law requires labeling to include warnings about both potential and verified hazards. Moreover, the law permits labeling statements with respect to safety only if they are supported by scientific evidence and are not false or misleading in any particular, and permits labeling statements about effectiveness only if they are supported by "substantial evidence", which is defined as "adequate and well-controlled investigations, including clinical investigations."

Accordingly, labeling is not intended to be a dispositive treatise of all possible medical opinion about a drug. It is, instead, intended to advise about potential hazards and convey documented statements with respect to safety and effectiveness.

This statutory scheme for drug labeling in no way impedes communication of significant medical information to the medical profession. There are many different forums for the expression of scientific opinion and debate. The opinions of individual physicians on such matters can be, and are, thoroughly and adequately discussed through medical journals, treatises, meetings of professional associations, and other similar events.

The Commissioner shares the concern of all persons that communication of significant medical information be encouraged, not restricted. He concludes, however that this is not a proper basis for including in labeling a discussion of all controversial issues related to the safety and effectiveness of a drug. Not infrequently, there are several points of view on a single issue. Congress wisely concluded that potential hazards, as well as known hazards, should be included in labeling in order to warn physicians about possible adverse reactions. Inclusion of conflicting opinions about such warnings would result in such uncertainty and confusion that the usefulness of such warnings in protecting the public against possible harm would be severely undermined, if not destroyed.

Although the opinions of individual physicians are honest and may turn out to be valid, it is recognized by leading doctors, the Congress, and the Supreme Court that "impressions or beliefs of physicians, no matter how fervently believed, are treacherous." See *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 619 (1973). Accordingly, the Commissioner concludes that drug labeling should include a warning whenever reasonable evidence exists indicating an association between a drug and a serious hazard. A causal relationship need not have been proved. Moreover, statements about the safety or effectiveness of a drug must be based upon adequate scientific evidence which, in the case of effectiveness, requires adequate and well-controlled clinical investigations. The Commissioner concludes that this is in full conformity with legal requirements.

9. One comment objected to the Commissioner's conclusion that scientific debate concerning drug effectiveness and drug warnings is better pursued in professional journals than in drug labeling. The comment stated that this policy is inconsistent since it acknowledges the importance of current medical debate to physicians yet prohibits use of one of the best means of informing physicians, namely, drug labeling.

The Commissioner does not agree with this comment. As explained above, the purpose of drug labeling is to convey clear and unambiguous warnings about potential health hazards to physicians, in a way that is likely to be read and immediately understood. To accomplish this purpose, it is essential that warnings be straightforward and unencumbered. Qualifications and conflicting opinions about a warning would seriously reduce its impact on the medical profession.

The Commissioner notes, and the comment agrees, that some doctors have limited time to devote to medical journals and other forums for debate on medical issues. If labeling were to be transformed into a forum for conflicting medical opinions, it is doubtful that physicians would have any greater time to study it than to study the material now intended to perform that function. Accordingly, the Commissioner concludes that it is important that drug labeling continue to be as concise and clear as possible. For this reason, the Commissioner has recently proposed in the FEDERAL REGISTER of April 7, 1975 (40 FR 15392), a new format for prescription drug labeling, i.e., the package insert.

10. A comment specifically objected to the Commissioner's conclusion that a clear and unambiguous warning must be included in labeling even though there is "serious medical and scientific doubt" about it. The comment contended that this position demeans the ability of physicians to digest and interpret material presented in drug labeling. It was suggested in the comment that an unqualified warning would likely be based upon more weighty evidence than "a mere suggestion" of a potential for danger unaccompanied by proof of causal relationship.

The Commissioner reiterates that this comment is based upon a misunderstanding of the legal requirements for drug label warnings. The statute requires that a warning be placed on the label when there is a potential hazard, as well as when there is proof of a causal relationship between the hazard and the drug. The congressional requirement of a clear drug warning under these circumstances assures that a potential hazard will be brought to the attention of physicians in straightforward and concise terms. Physicians will then be in a position, if they wish to do so, to pursue additional information through normal educational sources, such as treatises and medical journals. Accordingly, the requirement for a clear drug warning in no way demeans the ability of physicians but rather recognizes the traditional difference between drug labeling and educational material.

11. A comment contended that the legislative history of section 201(n) of the act requires that differences of opinion relating to material facts be included in labeling. The comment cited the 1938 House Report on the legislation, suggesting that misleading labeling may be corrected by a qualifying statement revealing differences of opinion. The comment stated that Congress anticipated that including both sides of a controversy on the label would be appropriate where the representations of curative value in drug labeling have only narrow and limited support.

The Commissioner concludes that this comment was fully answered in the preamble to the proposal. The legislative history demonstrates that, in 1938, Congress concluded that the only feasible means of resolving conflicting opinion with respect to drug labeling claims was to require that both positions be stated in the labeling. By the 1960's, however, the medical community and Congress concluded that drug effectiveness was subject to a higher standard, namely, scientific proof. Thus, the law was amended in 1962 to require that all labeling claims of effectiveness be supported by "substantial evidence", which is defined to mean adequate and well-controlled clinical investigations.

12. A comment stated that the proposed revision constituted a repeal of the "fair balance" doctrine concerning the merits or demerits of a drug in clinical use.

This issue was fully discussed in the preamble to the proposal and no new information was provided in the comment. The statutory standard of "fair balance" applies only to determining whether advertising for a prescription drug constitutes a true statement of information relating to side effects, contraindications, and effectiveness. The Commissioner believes that drug labeling must be informative and objective and, in this sense, must present a balanced statement of the essential information about drug products. This posture is entirely consistent with the position embodied in § 1.3, namely, that warnings about possible hazards associated with the use of a drug must, to be effective, remain undiluted by expressions of opinion discounting the risk.

Furthermore, the Commissioner notes that the doctrine of "fair balance" does not permit drug advertising to contain conflicting medical opinion with respect to claims of safety and effectiveness. Accordingly, even if it were properly applicable to drug labeling, that doctrine would not justify the result requested in the comment. There is no support in the statute or drug advertising regulations for the proposition that data obtained from adequate and well-controlled clinical studies must or may be "balanced" by the unsubstantiated opinions of individuals.

13. A comment cited § 202.1(a)(6)(viii) of the agency's drug advertising regulations (21 CFR 202.1(a)(6)(viii)), which states that a drug advertisement is misleading if it uses a statement by a recognized authority that is apparently favorable about a drug but fails to refer to concurrent or more recent unfavorable statements or data from the same author on the same subject, as an example of regulatory recognition of differences of medical opinion.

The Commissioner concludes that the cited portion of the drug advertising regulations is not relevant to the provisions of § 1.3(c). That section is one of a list of some 20 examples of situations where drug advertising may be misleading. It did not attempt to state those situations where the opinion of experts would be permitted in labeling or advertising. It was intended only to state that it would be false or misleading to quote part of a person's opinion without quoting all of it.

On the other hand, § 1.3(c) is intended to deal precisely with the question not considered in § 202.1(a)(6)(viii), namely, when medical opinion, and particularly a difference in medical opinion, may properly be used in drug labeling.

Accordingly, the Commissioner concludes that there is no conflict between these provisions.

14. A number of comments objected to the application of the "substantial evidence of effectiveness" test to all drugs, old and new. It was argued that this test applies only to new drugs marketed under section 505 of the act. The comments stated that the test was not incorporated in section 502 of the act.

As explained in the preamble to the proposal, it is the conclusion of the Commissioner that a drug is misbranded under section 502(a) of the act if any labeling statement represents or suggests that the drug is effective for any use for which its efficacy has not been proved by contemporary standards of scientific investigation. In short, a drug is misbranded if its labeling makes claims that have not been properly substantiated. Consumers of drugs and physicians who prescribe them are entitled to expect that claims of effectiveness will not be made without such verification. The definition of "substantial evidence" of effectiveness in section 505(d) represents as authoritative congressional approval of scientifically accepted standards of drug testing, namely, adequate and well-controlled investigations.

The "substantial evidence" standard clearly reflects prevailing scientific and medical views on the type of information necessary to establish drug effectiveness. Accordingly, claims of effectiveness for any drug based upon medical opinion, without substantial evidence of effectiveness, would be false or misleading. As the Supreme Court recognized in the Hynson case:

> The "substantial evidence" requirement reflects the conclusions of Congress, based upon hearings, that clinical impressions of practicing physicians and poorly controlled experiments do not constitute an adequate basis for establishing efficacy.

The Commissioner is of the view that the scientific standard of "substantial evidence of effectiveness" applies to all drugs, both old and new. The Supreme Court explicitly recognized in *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973), that "the reach of scientific inquiry under both section 505(d) and under section 201(p) is precisely the same." It is thus clear that the standards established by Congress for new drugs were intended to apply equally to old drugs.

Accordingly, the Commissioner concludes that no change in § 1.3(c) is warranted.

15. A comment contended that the Drug Amendments of 1962 were not intended to make clinical experience totally irrelevant, but rather to require substantial evidence as a prerequisite for initial marketing of ap roduct. The comment suggested that a drug approved prior to 1962 and used extensively thereafter may develop post-1962 clinical experience which is relevant even though not "adequate and well-controlled." It was suggested that such clinical experience would be pertinent to physicians in prescribing the drug and would supply material facts about the drug's effectiveness.

The Commissioner concurs that such clinical experience may, under some circumstances, be relevant. For example, such experience is often the source of initial information on possible new indications or on the need for additional warnings. In accordance with the statute, however, any new indications must be supported by substantial evidence before they may properly be used in labeling. On the other hand, such clinical experience may well be sufficient to justify an additional drug warning as a potential hazard, even before a causal relationship is proved, for the reasons already discussed above. The Commissioner therefore concludes that modification of § 1.3(c), is not warranted in this respect.

16. A comment contended that, because present drug labeling contains too many possible reactions, physicians are confused about the relative importance of the possible hazards involved. The comment stated that the proposed revision of § 1.3(c) would compound this situation by precluding helpful information of this type.

The Commissioner advises that § 1.3(c) will not preclude or hinder specific information concerning the degree of scientific certainty about a possible hazard, e.g., whether it is a potential or documented hazard, or its frequency or severity. Indeed, the proposed new regulations governing the package insert specifically provide for such information. The sole purpose of § 1.3(c) is to require warnings that are unencumbered by differing statements of opinion, in order to prevent drug labeling that would diminish the impact of such warnings.

17. Several comments pointed out that the preamble to the proposal acknowledged that the degree of scientific certainty about a possible hazard, or its frequency of occurrence or other related information, may accompany or be part of a warning. It was suggested that this is inconsistent with the basic prohibition of § 1.3(c) against communicating uncertainty about the very existence of the possibility of hazard. Some comments stated that this required that a difference of opinion as to the existence of a possibility of danger must itself be the subject of label explanation. Another comment stated that the final regulation should explicitly recognize the principle stated in the preamble to the proposal. A related comment argued that it was inconsistent for the agency to assert that warnings must be clear and unambiguous, while at the same time acknowledging that such warnings apply to potential or possible dangers without proof of causal relationships.

The Commissioner advises that there is a major difference between including the best available information on the degree of scientific certainty about a possible hazard, its frequency, severity, and other related information, and incorporating conflicting statements of differing opinions about drug hazards, including the existence of the hazard itself. The former permits clear and unambiguous information of use to the medical profession in making benefit-risk decisions on drug prescribing. The latter would, as discussed above, create confusion and uncertainty about the need to be concerned about possible drug hazards.

The Commissioner advises that, where medical information justifies a warning, the law requires that the warning must be included in the drug labeling. In accordance with the provisions of the proposed new regulation governing prescription drug package inserts published in the FEDERAL REGISTER of April 7, 1975 (40 FR 15392), "a warning shall be included in labeling as soon as there is reasonable evidence of an association of a serious hazard with a drug; a casual relationship need not have been proved." Different language is permitted where a causal relationship has or has not been established. Those proposed regulations also permit the inclusion of information with respect to frequency and severity of hazards. Thus, the information in the package insert is permitted to state, in very clear terms, the essential information on which the warning is based. In view of the provisions of that proposed regulation, the Commissioner concludes

that there is no need to include similar provisions in § 1.3(c).

18. A comment suggested that § 1.3(c)(2), prohibiting a statement of difference of opinion with respect to effectiveness unless supported by substantial evidence, is inconsistent with § 201.200 of the regulations (21 CFR 201.200), which requires that certain prescription drugs include a box warning statement reflecting the effectiveness evaluation by the NAS/NRC Efficacy Review. The comment contended that this box warning reflects differences of medical opinion, and proposed that § 1.3(c) exempt those drugs whose labeling has been revised in compliance with § 201.200.

The Commissioner concludes that it is unnecessary to exempt from § 1.3(c) any drug labeling that complies with § 201.200. The box warning required by § 201.200 reflects the evaluation of the NAS/NRC, with which the Food and Drug Administration concurs, on the current status of the drug involved. The Commissioner has concluded, and § 201.200(b)(1) provides, that failure to disclose NAS/NRC findings constitutes a failure to disclose a material fact within the meaning of section 201(n) of the act. Revision of § 1.3 in accordance with the comment would be inconsistent with the statute, and would result in, rather than prevent, misbranding. The NAS/NRC box warning is necessary precisely because it alerts the physician that there is a lack of substantial evidence at the present time. Accordingly, there is no need for revision of § 1.3(c) in this respect.

19. A comment argued that adequate directions for use cannot be provided, as required by section 502(f) of the act, if differences of opinion reflecting medically and scientifically valid information are prohibited.

The Commissioner does not agree with this comment. A clear and unambiguous warning concerning potential serious hazards, free of differing opinions, in no way conflicts with adequate and clear directions for use. Indeed, such warnings against potential hazards are essential to assure that directions for use are adequate to protect patients against the possibility of serious hazards.

20. Two comments expressed concern that § 1.3(c) would expose doctors to serious risk of malpractice liability, since a physician would be ill-advised to disregard a clear and unambiguous warning. The comments pointed out that a package insert may be considered by a court as prima facie proof of a physician's negligence if the physician deviates from the provisions of the insert.

The Commissioner concludes that this comment provides no basis for revising proposed § 1.3(c). Nothing in § 1.3(c) detracts from the obligation of each physician to exercise his best medical judgment in prescribing drugs for each of his patients. The Commission has stated, in the preamble to the proposed regulation on the legal status of package inserts published in the FEDERAL REGISTER of August 15, 1972 (37 FR 16503), that a physician who deviates from the package insert does not violate Federal law and that the package insert "is not intended either to preclude the physician from using his best judgment in the interest of the patient, or to impose liability if he does not follow the package insert." A warning may address potential hazards, not just documented hazards.

The Commissioner recognizes that drug labeling does not always contain the most current information and opinion available to physicians about a drug. Advances in medical knowledge and practice inevitably precede formal submission of proposed new labeling by the manufacturer, and approval by the Food and Drug Administration. Thus, good medical practice and patient welfare require that physicians remain free to use drugs according to their best knowledge and judgment.

The Commissioner is not authorized to implement the provisions of the act in order to insulate physicians from the possibility of malpractice litigation. Accordingly, the fact that the package insert is frequently accepted as evidence of sound medical practice is not sufficient to justify a change in § 1.3(c).

21. A comment objected to the applicability of § 1.3(c) to all labeling, as defined in section 201(m) of the act, since this would include promotional labeling and educational materials and thus "would make it virtually impossible to develop and disseminate meaningful and informative information of a promotional or nonpromotional nature." It was suggested that § 1.3(c) be limited to prescription drug labels and package inserts.

The Commissioner rejects this suggestion. It is important that all drug promotional material be subject to the same general requirements. Bona fide educational material that falls outside the category of labeling is, of course, not subject to the requirements of the act and regulations.

22. Some comments included views about the validity of the University Group Diabetes Program (UGDP) Study on Oral Hypoglycemic Drugs, and specifically on appropriate labeling and warnings for such drugs.

The Commissioner concludes that appropriate labeling for oral hypoglycemic drugs should be the subject of a separate regulation. Accordingly, these comments are taken into consideration in the separate rule making proceeding on that matter published elsewhere in this issue of the FEDERAL REGISTER. Section 1.3 deals with labeling for all products within the jurisdiction of the Food and Drug Administration, not specifically with labeling for oral hypoglycemic drugs.

23. A comment submitted by the Committee on the Care of the Diabetic (CCD), which initiated the Bradley litigation, contended that the Food and Drug Administration is acting with "an unconscionable example of arbitrary administrative action which violates the most fundamental precepts of fairness and due process" by proposing to amend § 1.3 on the ground that the Bradley litigation was based upon the former wording of § 1.3. The comment requested an administrative hearing on the proposed revision of § 1.3 on the grounds that the proposed amendment is in fact adjudicatory in nature and that it "effectively eliminates the CCD's role in the very negotiations between the FDA and the CCD which the court ordered continued." Finally, the comments requested a stay of the final promulgation of the regulation pending resolution of the labeling of oral hypoglycemic drugs.

The Commissioner advises that his review of, and proposal to amend, § 1.3 has been undertaken pursuant to the direction of the United States Court of Appeals for the First Circuit in the Bradley case. The court recognized in that case that significant issues with respect to the interpretation of § 1.3 had been raised and should be resolved at the administrative level.

The court noted an apparent inconsistency between § 1.3 and section 505 of the act:

> One reading of this regulation would suggest that unsubstantiated individual clinical opinions of qualified experts, which are insufficient under the "substantial evidence" test enacted in the effectiveness section, might be sufficient to create a fact omission of which might render the labeling misleading.

The court directed the Commissioner to consider "the intersection of the safety, effectiveness, and misbranding requirements" of the act in reviewing the matter. Thus, consideration of a complete revision of § 1.3 has been judicially mandated.

The Commissioner concludes that an administrative hearing on the proposed revision of § 1.3 is neither required nor necessary. This regulation is issued pursuant to section 701(a) of the act and in accordance with the rule making provisions of the Administrative Procedure Act (5 U.S.C. 553). The amendment is not adjudicatory in nature but rather constitutes a broad revision of § 1.3, applicable prospectively to all food, drugs, devices, and cosmetics.

The Commissioner advises that issues with respect to the proper labeling of oral hypoglycemic drugs are the subject of a notice of proposed rule making published elsewhere in this issue of the FEDERAL REGISTER.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 502 (a) and (f), 505, 512, 602(a), 701(a), 52 Stat. 1041, 1047, 1050, 1052–1053 as amended by 76 Stat. 781–785, 1054–1055, 82 Stat. 343–351 (21 U.S.C. 321(n), 343(a), 352 (a) and (f), 355, 360b, 362(a), 371 (a))); under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120)) 21 CFR 1.3 is revised to read as follows:

§ 1.3 Labeling; failure to reveal material facts.

(a) Labeling of a food, drug, device, or cosmetic shall be deemed to be misleading if it fails to reveal facts that are:

(1) Material in light of other representations made or suggested by state-

ment, word, design, device or any combination thereof; or

(2) Material with respect to consequences which may result from use of the article under (i) the conditions prescribed in such labeling or (ii) such conditions of use as are customary or usual.

(b) Affirmative disclosure of material facts pursuant to paragraph (a) of this section may be required, among other appropriate regulatory procedures, by

(1) Regulations in this chapter promulgated pursuant to section 701(a) of the act; or

(2) Direct court enforcement action.

(c) Paragraph (a) of this section does not:

(1) Permit a statement of differences of opinion with respect to warnings (including contraindications, precautions, adverse reactions, and other information relating to possible product hazards) required in labeling for food, drugs, devices, or cosmetics under the act.

(2) Permit a statement of differences of opinion with respect to the effectiveness of a drug unless each of the opinions expressed is supported by substantial evidence of effectiveness as defined in sections 505(d) and 512(d) of the act.

Effective date. This final regulation shall be effective August 6, 1975.

(Secs. 201(n), 403(a), 502 (a) and (f), 505, 512, 602(a), 701(a), 52 Stat. 1041, 1047, 1050, 1052–1053 as amended by 76 Stat. 781–785, 1054–1055, 82 Stat. 343–351 (21 U.S.C. 321(n), 343(a), 352 (a) and (f), 355, 360b, 362(a), 371(a)).)

Dated: July 1, 1975.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.75–17589 Filed 7–3–75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 310]

[Docket No. 75N—0062]

ORAL HYPOGLYCEMIC DRUGS

Proposed Labeling Requirements and Public Hearing

The Commissioner of Food and Drugs is proposing labeling for all oral hypoglycemic drugs and announcing a legislative-type public hearing on the issues involved. Labeling for this class of drugs has been the subject of extended public controversy and legal challenge for several years. The Commissioner believes that it is now essential to resolve the outstanding issues in this matter and that it is in the interest of the public health to consider the views of all parties in achieving such resolution. Accordingly, this notice proposes class labeling for oral hypoglycemic drugs that, on the basis of all information available to the Food and Drug Administration, the Commissioner believes is consistent with the requirements of the Federal Food, Drug, and Cosmetic Act and reflects current scientific knowledge on the safety and effectiveness of these drugs.

The Commissioner invites all interested persons to submit written comments on the proposed labeling. In addition, the Commissioner's designee, the Director of the Bureau of Drugs, will conduct an oral public hearing to afford interested persons a further opportunity for the presentation of data, information, and views. In the Commissioner's judgment, the subject matter of this notice is of sufficient importance to justify the use of this additional procedure, as provided in Part 2, Subpart E, of the regulations governing the administrative practice and procedures of the Food and Drug Administration, published in the FEDERAL REGISTER of May 27, 1975 (40 FR 23025).

Interested persons may submit comments on the labeling proposed in this notice by September 5, 1975. In addition, any interested person may submit data, information, or views in writing any time within 15 days after the conclusion of the public hearing. It is the intention of the Food and Drug Administration to conduct the public hearing prior to the expiration of the time for submitting comments, and the Commissioner therefore encourages interested persons to submit their comments as soon as possible, to allow review prior to the hearing.

After consideration of all written and oral comments and all data, information, and views presented at the public hearing, the Commissioner will promulgate in the FEDERAL REGISTER a final regulation prescribing labeling for oral hypoglycemic drugs, applicable to all drug products in this class. It is anticipated that the final labeling will conform with the guidelines for labeling of prescription drugs proposed by the Commissioner on April 7, 1975 (40 FR 15392).

I. General background. The following new drug applications have been approvide for oral hypoglycemic drugs:

1. NDA 10,670, Orinase tablets containing tolbutamide; The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.
2. NDA 15,500, Tolinase tablets containing tolazamide: The Upjohn Co.
3. NDA 11,641, Diabinese containing chlorpropamide; Pfizer Inc., 235 E. 42d St., New York, NY 10017.
4. NDA 13,378, Dymelor containing acetohexamide; Eli Lilly & Co., Indianapolis, IN 46206.
5. NDA 11,624, DBI tablets containing phenformin hydrochloride; Geigy Pharmaceuticals, Ardsley, NY 10502.
6. NDA 12,752, DBI–TD capsules containing phenformin hydrochloride; Geigy Pharmaceuticals.
7. NDA 17,126, Meltrol-50–100 capsules containing phenformin hydrochloride; USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, NY 10707.
8. NDA 17,127, Meltrol-25 tablets containing phenformin hydrochloride; USV Pharmaceutical Corp.
9. NDA 12,678, Tolbutamide tablets containing tolbutamide; Premo Pharmaceuticals Laboratories, Inc., 111 Leuning St., South Hackensack, NJ 07606.

The class of oral hypoglycemic drugs can be grouped into two categories on the basis of chemical structure: the sulfonylurea category (represented by acetohexamide, chlorpropamide, tolazamide, and tolbutamide) and the biguanide category (represented by phenformin hydrochloride). The mode of action and adverse effects are different for these two categories of oral hypoglycemic drugs. Accordingly, separate labeling is proposed for each category of drug.

Under section 505 of the Federal Food, Drug, and Cosmetic Act, the Commissioner is responsible for assuring that all new drugs have been shown to be safe and effective for their intended uses and that their labeling is not false or misleading. Exercise of this responsibility often requires reexamination of the safety, effectiveness, or labeling of drugs previously approved. The statutory scheme contemplates that new information may require the Commissioner to prescribe changes in the labeling of a drug, to reveal newly discovered limitations on use or warn of previously unanticipated hazards. And if labeling can no longer be written to assure that the benefits of use of a drug outweigh the risks of possible harm, the Commissioner is empowered, and obligated, to withdraw marketing approval.

The Commissioner believes that information about potential risks of oral hypoglycemic drugs obtained subsequent to their initial approval for marketing requires revision of their labeling. Specifically, he believes the study of modes of treatment for adult-onset diabetes conducted by the University Group Diabetes Program requires the addition of a warning about possible cardiovascular complications associated with the use of such drugs. Because of the importance of this matter and the concerns it has generated among physicians and their patients, the Commissioner has concluded that it is appropriate to invite exploration of the issues in a public forum before reaching a final determination on the wording of the labeling, including the warning.

The scientific and legal issues relating the labeling of oral hypoglycemic drugs have been the subject of protracted public debate. To resolve the many complex questions that have been raised, it is essential that the important issues be identified and that public comment be directed to these issues. The following discussion is presented to summarize the history of the oral hypoglycemic labeling controversy, to identify the issues that have arisen during the controversy, and to explain the position of the Food and Drug Administration on these issues.

II. Origin of the labeling controversy. Although insulin and the oral hypoglycemic drugs are both effective in lowering the blood glucose level in patients with maturity-onset diabetes, it is not clear that this reduction of blood glucose has a beneficial effect on the long term vascular complications of diabetes. In an attempt to answer this question, the National Institute of Arthritis, Metabolism, and Digestive Diseases of the National Institutes of Health sponsored a long term, prospective clinical trial. The study, begun in 1961, was conducted by the University Group Diabetes Program (UGDP) in 12 university medical centers. Patients selected for the study were maturity-onset diabetics who had been diagnosed no more than 1 year prior to entry into the study and did not require insulin to remain symptom-free.

All patients were given an appropriate diabetic diet and were randomly assigned to one of four different treatment groups: (1) Fixed dose of tolbutamide (1.5 grams/day), (2) Fixed dose of insulin (10 to 16 units based on body surface area), (3) Variable dose of insulin adjusted to control the blood glucose, or (4) Placebo. Eighteen months after the study began, a fifth group was added in which the treatment was a fixed dose of phenformin hydrochloride (100 milligrams/day). Patient recruitment was completed in 1966 with a total of 1,027 patients in the entire study and approximately 200 patients per treatment group.

By 1969 the unexpected finding of a significantly higher mortality due to cardiovascular causes was present in the tolbutamide group (12.7 percent or 26 out of 204) compared to the placebo group (4.9 percent or 10 out of 205), the fixed-dose insulin group (6.2 percent or 13 out of 210), and the variable insulin group (5.9 percent or 12 out of 204). After evaluating the available data, the investigators decided to discontinue use of tolbutamide in the study because they concluded that no benefit had been shown for these patients and there was evidence that the long term use of this drug was associated with a serious side effect.

A report on the findings of the UGDP was submitted to the Food and Drug Administration in March 1970. The report

concluded that "the findings of this study provide no evidence that the combination of diet and tolbutamide therapy as described and used for mild non-insulin dependent diabetics is more effective than diet alone. Moreover, the findings suggest that tolbutamide and diet may be less effective, at least insofar as cardiovascular mortality is concerned, than diet alone or than diet plus insulin." The Food and Drug Administration reviewed the report and convened an ad hoc meeting of experts on May 21, 1970, to evaluate the findings. The report was scheduled for presentation at the annual meeting of the American Diabetes Association on June 14, 1970. The program and abstracts for the meeting of the American Diabetes Association were disseminated in May, however, and the general findings of the UGDP study became widely publicized in the press. In view of this publicity, FDA released a statement to the press on May 22, 1970, indicating that the agency agreed with the UGDP's stated conclusions and would require labeling changes for the oral hypoglycemic drugs to reflect results of the study.

In October 1970, FDA distributed a Current Drug Information Bulletin to physicians and other health professionals confirming its agreement with the stated conclusions of the UGDP study. The agency recommended that use of sulfonylurea agents be limited to those patients with symptomatic adult-onset, nonketotic diabetes who cannot be adequately controlled by diet or weight loss alone and in whom the addition of insulin is impractical or unacceptable.

The first report of the UGDP study was published in November 1970 as a supplement to Diabetes, the journal of the American Diabetes Association (ref. 1). An accompanying editorial statement representing the view of the American Diabetes Association (ref. 2) made the following therapeutic recommendations:

> The clearest indication for oral agents is diabetes of mild or moderate severity in a patient who proves to be poorly controlled with diet and who is unable or unwilling to take insulin. In adult-onset diabetes with hyperglycemia and glycosuria, symptomatic or not, and in the absence of ketosis, a trial with an appropriate diet should come first. If this does not establish satisfactory control, insulin is to be preferred to other therapeutic agents because it is more uniformly effective in controlling hyperglycemia and the UGDP study indicates that it may be safer.

A statement published at the same time by The American Medical Association Council on Drugs (ref. 3) included the following recommendations:

> Although some flaws exist in the UGDP study, it clearly demonstrates that every effort should be made by the physician to control the symptomatic, maturity-onset diabetic with diet alone. Should this fail, treatment with insulin or oral hypoglycemic agents should be undertaken. If oral hypoglycemic agents are selected for therapy the results of the UGDP study should be kept in mind. Therefore, the consideration of treatment with oral hypoglycemic agents should be secondary to the use of insulin.

In May 1971 the use of phenformin in the UGDP study also was discontinued because there was a significantly higher cardiovascular mortality in the phenformin group (12.7 percent or 26 out of 204) compared to the other treatment groups. The preliminary results with phenformin were published in August 1971 (ref. 4). An additional report by the UGDP published in November 1971 discussed the clinical implications of the UGDP study (ref. 5).

In June 1971 the Food and Drug Administration issued a Drug Bulletin outlining changes in the labeling for all sulfonylurea drugs. The Drug Bulletin stated that diet and reduction of excess weight are the foundation of therapy of diabetes mellitus, and that when the disease is adequately controlled by these measures, no other therapy is indicated. The Bulletin also stated that the sulfonylurea agents are indicated in the treatment of adult-onset, nonketotic diabetes mellitus which cannot be adequately controlled by diet and reduction of excess weight alone and when, in the judgment of the physician, insulin treatment is not feasible.

From the time the results of the UGDP study were first reported, the study was subjected to intense criticism by both clinicians and statisticians (ref. 6 through 12). The basic scientific criticisms of the study were as follows:

1. Patient selection was inappropriate in that many patients had such mild diabetes that neither oral drugs nor insulin was indicated.
2. Total mortality in the tolbutamide group was not significantly different from that in the placebo group.
3. Excess cardiovascular mortality occurred in only a few clinics.
4. Randomization was not successful; therefore, the tolbutamide group was not comparable to the other groups at the outset of the study with respect to baseline cardiovascular risk factors.
5. With the exception of the variable insulin group, patients were maintained on a fixed drug dosage, contrary to the principles of good medical practice.
6. The use of tolbutamide and phenformin in the study was terminated prematurely, i.e., before definitive results were obtained.
7. The results of the study are contradicted by the studies of Keen (ref. 13 through 15) and of Paasikivi (ref. 16).

These criticisms were in turn analyzed by representatives of the UGDP (ref. 17) and by a statistician who had served as a consultant to the UGDP (ref. 18) and were rejected as a basis for invalidating the conclusions of the UGDP study. By this time, however, a widespread belief had developed among many physicians that the UGDP study was somehow flawed in terms of its design and execution, and therefore could not serve as a proper basis for a warning to the medical profession.

Uncertainty about the scientific quality of the UGDP study has been a prominent feature of all critical commentary since 1970 and has clearly inhibited acceptance by the medical profession of the study's most troubling finding, namely, that the administration of either tolbutamide or phenformin to patients with maturity-onset diabetes was associated with an increase in cardiovascular mortality. Undoubtedly one reason many practicing physicians were surprised by and reacted critically to the findings of the UGDP study is that the reported increase in cardiovascular mortality—though statistically significant—is not of the magnitude which can be readily detected by the individual physician in the course of practice.

The Commissioner recognizes that a large number of physicians still do not accept the position of the Food and Drug Administration as expressed in the FDA Drug Bulletin, or the position of the American Diabetes Association and the American Medical Association Council on Drugs as expressed in the references cited. An outcome of this disagreement was a prolonged legal confrontation that precluded the inclusion of warnings in the labeling for oral hypoglycemic drugs similar to those appearing in the Drug Bulletin.

III. *Legal challenge to the labeling of oral hypoglycemic drugs.* In November 1970 a group of physicians known as the Committee on the Care of the Diabetic was formed to oppose the proposed warning labeling for oral hypoglycemic drugs. The group included some of the country's leading diabetologists.

In October 1971 the Committee on the Care of the Diabetic petitioned the Commissioner to rescind his position that labeling for oral hypoglycemic drugs must contain a warning of associated cardiovascular hazards. The committee maintained that the UGDP study constituted an improper basis for the agency's decision, because it had been criticized on scientific, clinical, statistical, and other grounds. The Committee on the Care of Diabetic cited "controverting data," particularly the studies of Keen et al. (ref. 13 through 15) and Paasikivi (ref. 16), which, it contended, demonstrated the safety of oral hypoglycemic therapy. The committee also insisted that labeling for these drugs must reflect a "fair balance" of scientific opinion and cite the alleged deficiencies of the UGDP study and the controversial nature of its conclusions as well as the data in controversy.

After thorough evaluation of all the materials submitted to the agency, the Commissioner formally replied to counsel for the Committee on the Care of the Diabetic on June 5, 1972. The Commissioner's letter responded to each of the criticisms raised by the committee concerning the UGDP study and the agency's position. The Commissioner reaffirmed the position of the Food and Drug Administration that an undiluted and unencumbered warning in the labeling of the oral hypoglycemic drugs regarding cardiovascular hazards was fully warranted by the available evidence.

The agency's position on labeling for these drugs was again stated in an FDA Drug Bulletin issued in May 1972. Based

on the results for phenformin reported by the UGDP in 1971, the following labeling changes were to apply to the biguanide drugs as well as the sulfonylurea drugs:

Because of the apparent increased cardiovascular hazard associated with oral hypoglycemic agents, they are indicated in adult-onset, nonketotic diabetes mellitus only when the condition cannot be adequately controlled by diet and reduction of excess weight alone, and when, in the judgment of the physician, insulin cannot be employed because of patient unwillingness, poor adherence to injection regimen, physical disabilities such as poor vision and unsteady hands, insulin allergy, employment requirements, and other similar factors.

On July 13, 1972, counsel for the Committee on the Care of the Diabetic requested a formal evidentiary hearing before the agency. The Commissioner advised the petitioners that they were not entitled to a hearing since their submission did not meet the statutory standard of "substantial evidence" and stated that the Commissioner's letters constituted final agency action.

Soon thereafter suit was filed in the United States District Court for the District of Massachusetts by a group of 178 physicians, many of them members of the Committee on the Care of the Diabetic, asking that the Food and Drug Administration be enjoined from requiring manufacturers to include a warning of associated cardiovascular hazards in their labeling for oral hypoglycemic drugs (Bradley v. Richardson), Civil No. 72–2517 M (D. Mass. 1972)). A temporary restraining order was entered by the court on the same day. A hearing on the motion for a preliminary injunction was held before Judge Campbell on August 17, 1972, and, on August 30, 1972, he denied an injunction. Judge Campbell concluded that the plaintiffs had not demonstrated a reasonable probability of prevailing on the merits since the administrative action of the Food and Drug Administration, requiring an unencumbered warning, was a reasonable exercise of its statutory duty and the potential harm to users of the drugs was greater than any harm to the manufacturers or prescribers. Judge Campbell further observed that the Food and Drug Administration labeling requirements would not preclude physicians from exercising their best clinical judgment.

The plaintiffs filed another motion for a temporary restraining order and preliminary injunction on October 17, 1972, specifically requesting that the agency be enjoined unless the drug warning was redrafted to incorporate their views concerning the interpretation of the UGDP study. The plaintiffs argued that, without such a discussion, the labeling required by the Food and Drug Administration was misleading because it failed to reveal the existence of divergent opinion among experts, contrary to the agency's own regulation, § 1.3 (21 CFR 1.3). On November 3, 1972, the District Court issued a temporary restraining order, which became a preliminary injunction on November 7, 1972, restraining the agency from implementing the labeling.

On July 31, 1973, the United States Court of Appeals for the First Circuit vacated the District Court's injunction and remanded the case to the Food and Drug Administration for its further determination. In its opinion the Court ruled that the plaintiffs failed to exhaust their administrative remedies regarding the issues presented. The Court expressed its awareness of negotiations between the parties to arrive at a mutually acceptable solution even during litigation, and also expressed its belief that the remand could well produce the most informed and responsible solution possible (483 F. 2d 410 (1st. Cir. 1973)).

In its opinion the Court of Appeals also noted apparent inconsistency between the agency's regulation on the disclosure of differences of medical opinion in § 1.3 and the substantial evidence requirements added to the Federal Food, Drug, and Cosmetic Act by the Drug Amendments of 1962. The Court directed the Commissioner to consider § 1.3 as it relates not only to the substantial evidence standard but also to the misbranding requirements of the act. The agency is revising § 1.3, by order published elsewhere at 40 FR 28581 supra in this issue of the FEDERAL REGISTER, to bring the regulation into conformity with these related provisions of the law. As revised, § 1.3 does not permit a statement of differences of opinion in required warnings in the labeling of drugs.

It should be noted that no manufacturer of oral hypoglycemic drugs has initiated proceedings challenging the Commissioner's authority to require changes in the labeling of its products, or attacking the scientific basis for the specific labeling changes that the agency proposed to require.

After the Court of Appeals vacated the preliminary injunction in July 1973, the Food and Drug Administration undertook additional discussions concerning the labeling of the oral hypoglycemic agents with interested individuals and groups. In October 1973, the Director, Bureau of Drugs, and other members of the Food and Drug Administration met with representatives of the Committee on the Care of the Diabetic, the American Medical Association, the American Diabetes Association, the National Institutes of Health, and manufacturers of hypoglycemic drugs to discuss procedures that would facilitate the issuance of appropriate labeling. Based upon the discussion and input from the agency's staff, proposed labeling revisions were circulated for comments in February 1974 to those who attend the meeting and to other interested persons. Addressees were also invited to meet with agency officials, if desired, to discuss the labeling. Four such meetings were held between March 21 and April 24, 1974. The minutes of these meetings have been placed on public display in the office of the Hearing Clerk.

The response to the proposed labeling, including comments received at these meetings, revealed continuing major differences of opinion over the scientific validity of the UGDP study and over the asserted need for "fair balance" and the acknowledgement of "controversy" in the proposed warning. In addition, the Food and Drug Administration was advised that a major outside review, described below, of the UGDP study by a committee of the Biometrics Society was near completion.

The agency therefore decided to postpone implementation of the warning until this review was published. Since the UGDP study was the basis for the proposed warning, the Commissioner believed that this independent review of the statistical validity of the study should be available to all interested persons before taking definitive action. The review by the committee of the Biometrics Society required extensive reanalysis of the data in the UGDP study and was not published until February 10, 1975 (ref. 19). A more detailed report of the UGDP on phenformin was also published recently (ref. 20).

The Commissioner believes that sufficient time has passed to have permitted all interested persons to study these reports. Since no major new information in regard to the UGDP study is anticipated, the Commissioner believes it is now essential to effect all labeling changes that are appropriate and necessary on the basis of the UGDP study.

On June 11, 1975, and June 18, 1975, representatives of the Food and Drug Administration met with representatives of the Committee on the Care of the Diabetic to discuss late drafts of the Indications and Warnings sections of the labeling proposed in this notice. The representatives of the Committee on the Care of the Diabetic included one of the plaintiffs in Bradley v. Weinberger and the plaintiffs' attorney. The purpose of these meetings was to engage in good faith negotiation in an attempt to resolve outstanding issues in conformity with the intent of the Court of Appeals. Memoranda of these meetings and of subsequent phone calls and drafts of labeling discussed at the meetings are on file in the office of the Hearing Clerk.

IV. *Review of biostatistical issues by the Committee of the Biometrics Society.* The UGDP study was subjected to intense adverse criticism (ref. 6 through 12) largely on the basis of its design and the statistical analysis of the results. For this reason, the National Institute of Arthritis, Metabolism, and Digestive Diseases, which financed the UGDP study, sought an independent reveiw of the study. In 1972 a contract was awarded to the Biometrics Society, an international organization of biostatisticians, to make an in-depth assessment of the scientific quality of the UDGP study, particularly the biometric aspects of the design, conduct, and analysis of the trial, and a similar assessment of other controlled trials involving oral hypoglycemic agents. A committee of six members was selected to undertake this task. The committee visited the UGDP coordinating center and two of the clinical centers to study methods used in the trial, reviewed published criticisms of the UGDP study

in detail, interviewed both critics and supporters of the study, and made new analyses from the original data.

On the basis of this in-depth review, the Biometrics Society committee commented as follows on the major criticisms of the UGDP study:

1. The criticism that patient selection was inappropriate was considered to be "largely irrelevant to the primary issue raised by the critics," viz., the validity of the evidence pointing to excess mortality in the tolbutamide- and phenformin-treated groups. The committee argued that even "if it could be shown that the study group contained some non-diabetics * * * [a] drug found toxic in such subjects would not likely be counted safe for persons with well documented mild diabetes either."

2. With respect to the criticism that total mortality in the tolbutamide group was not significantly different from that in the placebo group, the committee concluded that this criticism "has some weight (although we do not interpret it as a criticism of the action of the UGDP) and that the toxic effect of the oral hypoglycemics cannot be affirmed with the certainty that would be present if total mortality were significantly different."

3. In response to the criticism that excess mortality occurred in only a few clinics, the committee presented calculations of the data to take account of the number of patients treated in each clinic and the duration of their treatment and concluded that "the excess mortality is not in fact confined to a few clinics and that this particular criticism should not be taken to detract from the interpretation of the UGDP findings."

4. The contention that randomization was not successful was studied in detail by the committee which identified "a puzzling anomaly concerning the distribution of the two sexes to the four treatment groups within clinics." The committee reviewed the randomization procedure in detail and examined the log books containing records of the allocation of each patient. The committee's report reads: "We were not able to find an assignable cause for the surprising allocation of the sexes to treatments but have no reason to think that the study has been compromised by a breakdown in the randomization of patients to the treatment groups. Because of the imbalance of sexes in the treatment groups in some clinics, however, allowance for this has been made in our analysis." The committee went on to analyze the data by several different statistical approaches, including those used originally by the UGDP investigation. The committee concluded: "Our findings * * * take into account the differences between centers and the differences in length of treatment, as well as the baseline variables. They support the view of Cornfield [ref. 18] that there is no evidence that the baseline differences arising from the randomization contributed in any important way to the finding of adverse effect from tolbutamide."

5. The criticism that the oral hypoglycemic drugs were given in fixed dosage was rejected by the committee, with respect to conclusions regarding toxicity, as follows: "It is true that the use of a fixed dose of drug, which was also the approach adopted by Feldman et al. [ref. 21] and Keen and Jarrett [ref. 14], limits the generalization about therapeutic effects, but since the dose of tolbutamide is about equal to the average recommended for therapeutic use, an evaluation of its possible toxic effect is highly relevant."

6. Concerning the criticism that the use of tolbutamide and phenformin was terminated prematurely, the committee acknowledged that "It would have been easier to interpret the findings if there were more data on mortality." The committee also recognized, however, the ethical issues raised by continuing these drugs in the study and concluded: "We do not criticize the UGDP investigators for having made the decision when they did. Nevertheless, the result of that decision is to leave us with some residual uncertainty about the meaning of the findings, a point that is well understood by the UGDP investigators themselves."

7. In considering the criticism that the results of the UGDP study are contradicted by the studies of Keen (ref. 13 through 15) and of Paasikivi (ref. 16), the committee analyzed these studies in detail. With respect to the data of Keen and his colleagues, they concluded that, in their ongoing prospective study, neither cardiovascular mortality nor total mortality in the tolbutamide group is significantly different from that in the placebo group. Because of imperfections in the randomization process and in the maintenance of blinding, and because of the preliminary nature of the data obtained to date, the committee concluded that "the provisional data that Dr. Keen has kindly sent us * * * do not throw doubt on the UGDP findings in regard to deaths from cardiovascular causes." In regard to the Paasikivi study, which appeared to show a beneficial effect of tolbutamide on mortality in the first year in patients who survived a first myocardial infarction, the committee concluded: "This study neither confirms nor contradicts the UGDP findings, as the population under consideration was not one of maturity-onset diabetics, and the patients taking tolbutamide had been exposed to a relatively small dose for a shorter time than that applied in the UGDP study." The studies of Feldman et al. (ref. 21) and of Tzagournis and Reynertson (ref. 22) were also briefly reviewed by the committee. Their conclusion was that in neither study has a sufficient number of deaths yet occurred to permit meaningful interpretation of results.

In addition to evaluating these criticisms of the UGDP study, the Biometrics Society committee conducted extensive new analyses of the UGDP data, taking into account the effect of various baseline variables and cardiovascular risk factors. These analyses confirmed that cardiovascular mortality was increased in the tolbutamide group. This increase was statistically significant in females, especially in women over the age of 53, but not in males. An important finding was that the highest death rate occurred in the group of patients who adhered most closely to the tolbutamide regimen and did not have their dose modified. Also when the analysis was conducted according to an approach called the survival modeling method, which takes into account the proportion of time each patient received the assigned medication, women in the tolbutamide group had a statistically significant increase in both cardiovascular and total mortality. This does not mean that the study necessarily showed the drug to carry less risk in males. On this point the committee concluded: "The data do not support the same conclusions for men, but one possible reason is that the smaller number of patients in the male group results in lack of sensitivity to detect differences of moderate magnitude."

In the final section of its report, the Biometrics Society committee summarized its conclusions:

> Although we have concerned ourselves almost entirely with issues related to the possible toxicity of tolbutamide, we wish to point out that one of the valuable aspects of the completed UGDP trial will be the provision of data on the long term treatment of adult-onset diabetes with insulin. It is already clear that the benefits from this treatment are not dramatic, and the only worthwhile information about them will have to come from the relatively precise methods of a controlled clinical trial. In this sphere, the UGDP trial has no competitor * * *
>
> On the question of cardiovascular mortality due to tolbutamide and phenformin, we consider that the UGDP trial has raised suspicions that cannot be dismissed on the basis of other evidence presently available.
>
> We find most of the criticism levelled against the UGDP findings on this point unpersuasive. The possibility that deaths may have been allocated to cardiovascular causes preferentially in the groups receiving oral therapy exists, and, in view of the 'nonsignificance' of differences in total mortality, some reservations about the conclusion that the oral hyperglycemics [sic] are toxic must remain. Nonetheless, we consider the evidence of harmfulness moderately strong. The risk is clearly seen in the group of older women * * * Whether it affects all subgroups of patients cannot be decided on the basis of the available data, owing to the small number of deaths involved in these subgroups * * *
>
> In conclusion, we consider that in the light of the UGDP findings, it remains with the proponents of the oral hyperglycemics [sic] to conduct scientifically adequate studies to justify the continued use of such agents.

V. *Recent additional information on safety of oral hypoglycemic drugs.* The more detailed report on the results of the phenformin study was published recently by the UGDP (ref. 20). In addition to the higher mortality from all causes and from cardiovascular causes observed in the phenformin-treated group compared to the other treatment groups, evidence was presented that phenformin therapy resulted in increased blood pressure levels and heart rate, thus suggesting possible mechanisms by which this drug might influence cardiovascular mortality.

Recently, additional reports relating to the safety of oral hypoglycemic drugs have appeared:

1. At hearings before the Subcommittee on Monopoly of the Select Committee on Small Business, U.S. Senate, on January 31, 1975, Dr. P. J. Palumbo reported that a retrospective study of diabetic patients treated at the Mayo Clinic suggests that survival was lower in those patients treated with oral hypoglycemic agents, compared to those patients treated with insulin. The full study has not yet been published.

2. A retrospective study of diabetic patients treated at the Joslin Clinic, reported in a doctoral thesis (ref. 23), can be interpreted as providing results that are consistent with those of the UGDP. This study has not yet appeared in the medical literature.

3. A positive inotropic effect, i.e., increased force of muscular contraction, of sulfonylurea agents on the heart muscle has been demonstrated (ref. 24 and 25). The increased oxygen requirement resulting from such an effect could have a deleterious effect in patients with coronary artery disease. Limited animal studies also suggest that the sulfonylurea agents may affect the excitability of heart muscle (ref. 25), which could predispose the heart to develop abnormal rhythms, particularly in the presence of a decreased oxygen supply.

4. Results from a study on the chronic effects of tolbutamide in the rhesus monkey by R. W. Wissler et al. (FDA contract 72–114) indicate there is an increased frequency and severity of atherosclerotic lesions in the coronary arteries of the tolbutamide-fed monkeys compared to the control monkeys (ref. 26). The final report of this study is under review.

While neither of the two epidemiological studies is a prospective clinical trial such as the UGDP study, the preliminary reports indicate that further information casting doubt on the safety of the oral hypoglycemic drugs may be forthcoming. And, although the animal findings cannot be considered necessarily relevant to the issue of excess cardiovascular mortality in diabetic patients, they indicate that sulfonylureas may have potentially adverse effects on the cardiovascular system of certain animals which can be detected by appropriate pharmacological and toxicological tests.

In addition to these reports, two critiques of the Biometrics Society committee report have recently been published (ref. 27 and 28).

VI. *Discussion of proposed labeling for oral hypoglycemic drugs.* The judgment of the Commissioner that changes must be made in the labeling of the oral hypoglycemic drugs to reflect the findings of the UGDP study is well known from previously published statements. The Commissioner is therefore proposing labeling in this notice for public comment and scheduling a public hearing to receive additional data, information, and views. After consideration of all materials submitted, the Commissioner will publish final labeling for oral hypoglycemic drugs in the FEDERAL REGISTER.

The warning proposed in this labeling for oral hypoglycemic drugs is based primarily on a thorough review and evaluation of the UGDP study. In proposing the overall labeling, the Commissioner has also carefully considered:

1. Published reviews, criticisms, and rejoinders to criticism of the UGDP study.
2. Other scientific and clinical investigations of the oral hypoglycemic agents.
3. The advice of experts.
4. Comments submitted to the agency by interested persons.

The Commissioner reaffirms his conclusion that the UGDP study is an adequate and well-controlled clinical trial, which is the most extensive and detailed examination of long term administration of hypoglycemic agents yet undertaken. Although the study has shortcomings, which might be expected in any clinical trial of this complexity, the shortcomings do not invalidate the central finding that there appears to be an increased risk of cardiovascular mortality associated with the administration of tolbutamide and of phenformin to maturity-onset diabetic patients, compared to treatment with diet alone or diet plus insulin. This conclusion has in the past been reached independently by the UGDP investigators, the FDA, and the Biometrics Society committee, and is again affirmed by the Commissioner. Other clinical trials of these oral hypoglycemic drugs are not comparable to the UGDP study and provide insufficient evidence to negate the findings of the UGDP study.

Accordingly, although comments concerning the validity of the UGDP study and its conclusion will be accepted, comments on this issue that contribute no new information and only reiterate published criticisms, which have already been extensively reviewed by the Food and Drug Administration, are not considered useful at this time.

The Commissioner proposes that a boxed warning concerning the possible increased risk of cardiovascular mortality be included in the labeling for these drugs. This warning is based on the findings of the UGDP study. The Commissioner emphasizes that the requirement for such a warning does not depend upon an absolute certainty that the findings of the UGDP study are correct. Prudence dictates that a warning be issued whenever there is sufficient evidence from controlled or uncontrolled studies to believe that a drug may be hazardous or carry a risk and that such warning is necessary for safe and effective use of the drug by physicians and patients. The Federal Food, Drug, and Cosmetic Act provides no standard for the amount or character of scientific evidence required for the issuance of a warning. The decision to require a warning is a matter of judgment which must be made in light of both the available scientific evidence and the opinion of experts who interpret that evidence. The Commissioner believes that the UGDP study is a validly conducted trial and accepts the opinion of the Biometric Society committee and other experts that the increased cardiovascular mortality found in this trial to be associated with these drugs cannot reasonably be attributed to scientific shortcomings in the study. Under those circumstances, a clear warning is necessary even though a residual uncertainty over the correctness of the study may be present. Warnings may properly be required on the basis of evidence that falls short of conclusive proof.

In conformity with Food and Drug Administration policy that warnings must be presented in unambiguous terms without disclaimers or qualifications that would undermine or destroy their usefulness, there is no mention in the proposed warning of other studies involving the oral hypoglycemic drugs. The mention of studies in which increased cardiovascular mortality was not found would serve only to encumber the warning and would therefore not be consistent with revised § 1.3. Comments concerning the principle of an unencumbered warning, which have been received and considered in conjunction with the proposed revision of § 1.3 published in the FEDERAL REGISTER of September 16, 1974 (39 FR 33229), are addressed in the final regulation published at 40 FR 58581, supra.

The proposed warning does, however, contain a statement acknowledging the controversy that exists over the interpretation of the UGDP study and states that, in spite of this, the UGDP findings provide adequate scientific basis for a warning. The purpose of this statement is to emphasize clearly the basis for the warning. Comments on specific wording in the proposed warning are invited by this notice. The Commissioner advises, however, that he does not intend to reopen consideration of the principle of an unencumbered warning which is embodied in the final regulation relating to § 1.3.

The Commissioner concludes that, from the standpoint of patient safety, it is prudent to apply the possible increased risk of cardiovascular mortality for tolbutamide and phenformin to other sulfonylurea and biguanide drugs in view of the similarities in chemical structure and mode of action for members within each of these two categories. This position was endorsed by the Endocrinology and Metabolism Advisory Committee of the FDA at its meeting on June 28, 1971, but additional comment at this time would also be appropriate.

The Commissioner also concludes that a patient population exists for which these drugs, properly labeled, can be considered as safe and effective. Marketing therefore may continue. The Commissioner is proposing, however, that this patient population be limited to patients with maturity-onset diabetes whose symptoms or blood glucose level cannot be controlled by diet alone and who cannot take insulin for one or more of the reasons identified in the labeling. This restriction in labeling has been opposed in the past on the ground that it interfered with the practice of medicine. The

Commissioner recognizes that drug labeling impacts on the practice of medicine. For this reason the Food and Drug Administration has an obligation to ensure that drug labeling is as correct and accurate as possible and meets the statutory standard of describing the conditions of use under which the drug may be considered safe and effective. Those limitations on use that properly derive from a known hazard or potential risk must, in the interest of safety, be included in drug labeling. This principle is stated in the proposed regulations on prescription drug labeling (published in the FEDERAL REGISTER of April 7, 1975 (40 FR 15392)), time for coment on which has been extended to August 6, 1975, by notice published in the FEDERAL REGISTER of June 11, 1975 (40 FR 24909).

The Commissioner proposes the appended labeling for oral hypoglycemic agents of the sulfonylurea and biguanide categories as labeling providing the essential information for the safe and effective use of these drugs. Comments addressed to any portion of the labeling will be considered.

REFERENCES

Copies of all references cited below are on public display in the office of the Hearing Clerk, Food and Drug Administration, Room 4–65, 5600 Fishers Lane, Rockville, MD 20852:

1. The University Group Diabetes Program, "A Study of the Effects of Hypoglycemic Agents on Vascular Complications in Patients with Adult-Onset Diabetes. I. Design, Methods and Baseline Results. II. Mortality Results," *Diabetes,* 19 (supp. 2):747–830, 1970.

2. Ricketts, H. T., "Editorial Statement," *Diabetes,* 19 (supp. 2):iii–v, 1970.

3. AMA Council on Drugs, "Statement Regarding the University Group Diabetes Program (UGDP) Study," *Diabetes,* 19 (supp. 2):vi–vii, 1970.

4. The University Group Diabetes Program, "Effects of Hypoglycemic Agents on Vascular Complications in Patients with Adult-Onset Diabetes. IV. A Preliminary Report on Phenformin Results," *Journal of the American Medical Association,* 217:777–784, 1971.

5. The University Group Diabetes Program, "Effects of Hypoglycemic Agents on Vascular Complications in Patients with Adult-Onset Diabetes. III. Clinical Implications of UGDP Results," *Journal of the American Medical Association,* 218:1400–1410, 1971.

6. Reeves, R. L., "Erroneous Interpretation of Data" (correspondence), *Northwest Medicine,* 69:470, 1970.

7. Hare, R. L., "Therapeutics—by Headline and Edict," *Northwest Medicine,* 70:118–119, 1971.

8. Feinstein, A. R., "Clinical Biostatistics. VIII. An Analytic Appraisal of the University Group Diabetes Program (UGDP) Study," *Clinical Pharmacology and Therapeutics,* 12: 167–191, 1971.

9. Schor, S., "The University Group Diabetes Program. A Statistician Looks at the Mortality Results," *Journal of the American Medical Association,* 217:1671–1675, 1971.

10. Seltzer, H. D., "Tolbutamide Mortality in the Six Phenformin Clinics," (letter to the editor), *Journal of the American Medical Association,* 218:594, 1971.

11. Brandman, O., "University Group Diabetes Program and the Practicing Physician," *Journal of the Medical Society of New Jersey,* 68:909–911, 1971.

12. Seltzer, H. S., "A Summary of Criticisms of the Findings and Conclusions of the University Group Diabetes Program (UGDP)," *Diabetes,* 21:976–979, 1972.

13. Keen, H., R. J. Jarrett, C. Chlouverakis, and D. R. Boyns, "The Effect of Treatment of Moderate Hyperglycemia on the Incidence of Arterial Disease," *Postgraduate Medical Journal,* 44:960–965, 1968.

14. Keen, H., and R. J. Jarrett, "The Effect of Carbohydrate Tolerance on Plasma Lipids and Atherosclerosis in Man," in *Atherosclerosis,* R. J. Jones, editor, Berlin, Springer-Verlag, 1970, pp. 435–444.

15. Keen, H., "Factors Influencing the Progress of Atherosclerosis in the Diabetic," *Acta Diabetologica Latina,* 8 (supp. 1):444–456, 1971.

16. Paasikivi, J., "Long-Term Tolbutamide Treatment after Myocardial Infarction. A Clinical Biochemical Study of 178 Patients Without Overt Diabetes," *Acta Medica Scandinavica, Supplement,* 507:3–82, 1970.

17. Prout, T. E., G. L. Knatterud, C. L. Meinert and C. R. Klimt, "The UGDP Controversy. Clinical Trials Versus Clinical Impressions," *Diabetes,* 21:1035–1040, 1972.

18. Cornfield, J., "The University Group Diabetes Program. A Further Statistical Analysis of the Mortality Findings," *Journal of the American Medical Association,* 217: 1676–1687, 1971.

19. "Report of the Committee for the Assessment of Biometric Aspects of Controlled Trials of Hypoglycemic Agents," *Journal of the American Medical Association,* 231:583–608, 1975.

20. The University Group Diabetes Program, "A Study of the Effects of Hypoglycemic Agents on Vascular Complications in Patients with Adult-Onset Diabetes. V. Evaluation of Phenformin Therapy," *Diabetes,* 24 (supp. 1):65–184, 1975.

21. Feldman, R., D. Crawford, R. Elashoff, and A. Glass, "Progress Report on the Prophylactic Use of Oral Hypoglycemic Drugs in Asymptomatic Diabetes: Neurovascular Studies," *Advances in Metabolic Disorders,* 2 (supp. 2):557–567, 1973.

22. Tzagournis, M., and R. Reynertson, "Mortality from Coronary Heart Disease During Phenformin Therapy," *Annals of Internal Medicine,* 76:587–592, 1972.

23. Kanarek, P. H., "Assessing Survival in a Diabetic Population," thesis, Harvard School of Public Health, Boston, January 1973.

24. Lasseter, K. C., G. S. Levey, R. F. Palmer and J. S. McCarthy, "The Effect of Sulfonylurea Drugs on Rabbit Myocardial Contractibility, Canine Purkinje Fiber Automaticity, and Adenyl Cyclose Activity from Rabbit and Human Hearts," *The Journal of Clinical Investigation,* 51:2429–2434, 1972.

25. Levey, G. S., K. C. Lasseter, and R. F. Palmer, "Sulfonylureas and the Heart," *Annual Review of Medicine,* 25:69–74, 1974.

26. Wissler, R. W., J. Borensztajn, G. S. Godfrey, G. Seymour, A. Rubenstein, C. H. Ts'ao, "A Study of the Chronic Effects of Tolbutamide in the Rhesus Monkey," FDA contract 72–114, February 15, 1975.

27. Bradley, R. F., H. Dolger, P. H. Forsham, and H. Seltzer, "Settling the UGDP Controversy?", *Journal of the American Medical Association,* 232:813–817, 1975.

28. O'Sullivan, J. B. and R. B. D'Agostino, "Decisive Factors in the Tolbutamide Controversy," *Journal of the American Medical Association,* 232:825–829, 1975.

VII. *Notice of public hearing.* The Commissioner concludes that, to permit maximum public participation in the development of labeling requirements for oral hypoglycemic drug products, a public hearing shall be held to provide an opportunity for interested persons to present data, information, and views on the proposed labeling. This public hearing is ordered pursuant to § 2.400(a) (21 CFR 2.400(a)) and shall be conducted in accordance with the procedures established in Subpart E of Part 2 of the regulations. The Commissioner has designated J. Richard Crout, M.D., Director, Bureau of Drugs, to be the presiding officer at such hearing, to be held August 20, 1975, beginning at 9 a.m. in Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20852.

Interested persons who wish to make an oral presentation at the hearing shall file a written notice of appearance with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852 by close of business August 6, 1975. The notice of appearance shall state the approximate amount of time requested by the person for presentation. It shall also give the telephone number of the person to be contacted regarding the schedule for presentation. Individuals and organizations with common interests are strongly urged to consolidate or coordinate their presentations because of the limitations of time.

By August 11, 1975, the Food and Drug Administration will communicate by telephone with each person who requested an opportunity to be heard, regarding the time his or her oral presentation is scheduled to begin and the amount of time allocated for his or her presentation. The Food and Drug Administration may require joint presentations by persons sharing common views. The Food and Drug Administration will prepare a hearing schedule, listing the participants and the time allotted to each, which shall be filed with the Hearing Clerk and a copy mailed to each participant.

The hearing will be transcribed. Any interested person may, consistent with the orderly conduct of the meeting, also record or otherwise make his or her own transcript of the meeting. Each participant may use the allotted time however he or she desires, consistent with decorum and order, and may present written data, information or views for inclusion in the record of the hearing. Any person who desires to submit an advance written statement may do so in quintuplicate to the Hearing Clerk. All written comments and statements submitted before August 15, 1975, will be reviewed by the presiding officer prior to the hearing, so that full repetition at the hearing will be unnecessary. A participant may be accompanied by any number of additional persons.

If a participant is not present when his or her presentation is scheduled to begin, the participants following will be taken in order. An attempt will be made to hear any scheduled participant who misses his assigned time at the conclusion of the hearing. Other interested persons attending the hearing who did not request an opportunity to speak will be

given an opportunity to make oral presentations at the conclusion of the hearing to the extent that time permits.

The presiding officer, as well as any other Food and Drug Administration employee serving with him as a panel, may question any participant during or at the conclusion of his presentation. No other persons attending the hearing may question a participant. The presiding officer may allot additional time to any participant if he concludes that it is in the public interest, but may not reduce the time allotted to anyone.

The record of the hearing will remain open until September 5, 1975, for the submission of any additional written statements or comments regarding oral presentations made at the hearing.

No written submission, or any portion thereof, made in response to this notice shall be received or held in confidence. The administrative record of this rule making proceeding shall consist of all relevant FEDERAL REGISTER notices and the documents to which they refer, all written submissions made in response to this notice, and the transcript of the oral hearing made by the Food and Drug Administration. The administrative record of the proceeding shall be made available for public examination.

VIII. *Proposed regulation for the labeling of oral hypoglycemic drugs.* Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502.505, 701(a), 52 Stat. 1050–1053, as amended, 1055 (21 U.S.C. 352, 355, 371(a))) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that Part 310 of Subchapter D of Title 21 of the Code of Federal Regulations be amended by adding a new § 310.510 as follows:

§ 310.510 Labeling for oral hypoglycemic drugs.

(a) An adequate and well-controlled clinical trial (the University Group Diabetes Program study) has indicated that there appears to be an increased risk of cardiovascular mortality associated with the administration of tolbutamide and of phenformin (oral hypoglycemic drugs of the sulfonylurea and biguanide categories, respectively) to maturity-onset diabetic patients as compared to treatment with diet alone or diet plus insulin. The Commissioner concludes that in view of the great similarities in chemical structure and mode of action for drugs within each of these two categories, it is prudent from a safety standpoint to consider that the possible increased risk of cardiovascular mortality for tolbutamide and phenformin also applies to other sulfonylurea and biguanide drugs. Therefore, the labeling for oral hypoglycemic drugs shall describe properly the conditions for their use and include a warning concerning the possible increased risk of cardiovascular mortality associated with such use, as set forth in paragraphs (b) and (c) of this section.

(b) Labeling for oral hypoglycemic drugs of the sulfonylurea category shall be as follows:

DESCRIPTION

(Trade name, established name) is an oral blood-glucose-lowering drug of the sulfonylurea category. It is a white, crystalline compound, formulated as a tablet for oral administration. (Manufacturer to add structural formula and other appropriate information.)

ACTIONS

Administration of (drug) appears to lower the blood glucose initialy by stimulating the release of insulin from the pancreas; the effect is thus dependent on functioning beta cells in the pancreatic islets. The mechanism by which (drug) lowers blood glucose during long term administration has not been clearly established. Many patients who at first demonstrate an adequate glucose-lowering effect with a sulfonylurea agent subsequently prove to be no longer satisfactorily responsive, i.e., secondary failure may occur.

(Manufacturer to supply information about:

1. Absorption.
2. Metabolism and excretion.
3. Plasma half-life and the effect of hepatic or renal impairment on blood levels, metabolism, and excretion.
4. Peak and duration of glucose-lowering effect, indicating the duration of effect relative to the class of sulfonylurea agents, e.g., shortest acting, longest acting, etc.
5. Mechanism of drug interaction with agents that impair or potentiate drug effect.)

INDICATIONS

(Drug) is indicated to control symptoms due to hyperglycemia in patients with maturity-onset nonketotic diabetes mellitus whose symptoms cannot be controlled by diet alone and in whom insulin cannot be used because of patient unwillingness, erratic adherence to the injection regimen, poor vision, physical or mental handicap, insulin allergy, employment requirements, or other similar factors.

(Drug) may also be used to lower blood glucose in asymptomatic patients whose blood glucose elevation cannot be controlled by diet alone and in whom insulin cannot be used for any of the above reasons. In considering the use of (drug) in asymptomatic patients, it should be recognized that whether or not controlling the blood glucose is effective in preventing the long term cardiovascular or neural complications of diabetes is an unanswered scientific question.

The use of (drug) may be associated with an increased risk of cardiovascular mortality as compared to diet alone or diet plus insulin; see WARNINGS. For this reason, it should be used only when the advantages in the individual patient justify the potential risk. The patient should be informed of the advantages and potential risks of (drug) and of alternative modes of therapy and should participate in the decision to use this drug.

The foundation of therapy in the obese maturity-onset diabetic is caloric restriction and weight loss. Proper dietary management alone is often effective in controlling the blood glucose and eliminating symptoms of polydipsia and polyuria. Use of (drug) must be considered by both the physician and patient as a treatment *in addition to* diet and not as a substitute for diet or as a convenient mechanism for avoiding dietary restraint.

Many patients who are initially responsive to oral hypoglycemic drugs become unresponsive or poorly responsive over a period of time, usually 1 to 5 years. (Drug) should be given only to patients demonstrated to be responsive to it; see DOSAGE AND ADMINISTRATION for discussion of secondary failure. Short term administration of (drug) may be sufficient during periods of transient loss of control.

Concomitant Therapy with a Biguanide. (Drug) may be used in conjunction with phenformin to control symptoms due to hyperglycemia in patients with maturity-onset nonketotic diabetes mellitus whose symptoms cannot be controlled by diet and maximum recommended doses of either drug alone and in whom insulin cannot be used for any of the reasons cited above.

In considering the use of concomitant therapy, it should be noted that both a sulfonylurea drug (tolbutamide) and a biguanide drug (phenformin) have been reported to be associated with increased cardiovascular mortality; see WARNINGS. In addition, phenformin can produce lethal lactic acidosis in some patients. Thus the use of (drug) in association with phenformin carries a greater risk than the use of (drug) alone.

If a judgment is made that (drug) and phenformin are to be used together in a particular patient, it should be established that the patient is responsive to both drugs. This may be accomplished either by a trial of each drug separately or by adding the second drug and then tapering the dosage of the first, observing for diminished control of blood glucose. Once the need for both drugs is established, the desired control of blood sugar may be obtained by adjusting the dose of either drug. The possibility of hypoglycemia should be anticipated and appropriate precautions taken. See package insert for phenformin hydrochloride for CONTRAINDICATIONS, WARNINGS, PRECAUTIONS, ADVERSE REACTIONS, and DOSAGE AND ADMINISTRATION.

CONTRAINDICATIONS

(Drug) is contraindicated in patients with:

1. Known hypersensitivity or allergy to the drug.
2. Diabetic ketoacidosis, with or without coma. Such patients should be treated with insulin.

WARNINGS

SPECIAL WARNINGS ON CARDIOVASCULAR MORTALITY

(This subsection of labeling to be boxed, set in boldface type, and placed at the beginning of WARNINGS section of labeling.)

The administration of oral hypoglycemic drugs may be associated with increased cardiovascular mortality as compared to treatment with diet alone or diet plus insulin.

This warning is based on the study conducted by the University Group Diabetes Program (UGDP), a long term prospective clinical trial designed to evaluate the effectiveness of glucose-lowering drugs in preventing or delaying vascular complications in patients with maturity-onset nonketotic diabetes. The study involved 1,027 patients who were randomly assigned to one of five treatment groups (Diabetes, 19 (supp. 2): 747–830, 1970; Diabetes, 24 (supp. 1): 65–184, 1975).

The UGDP reported that patients treated for 5 to 8 years with diet plus a fixed dose of tolbutamide (1.5 grams per day) or diet plus a fixed dose of phenformin (100 milligrams per day) had a rate of cardiovascular mortality approximately twice that of patients treated with diet alone or diet plus insulin. Total mortality was increased in both the tolbutamide- and phenformin-treated groups, but this increase was statistically significant only for phenformin. Despite controversy regarding the interpretation of these results, the findings of the UGDP study provide adequate scientific basis for this warning.

Although only one drug in the sulfonylurea category (tolbutamide) and one in the biguanide category (phenformin) were included in this study, it is prudent from a safety standpoint to consider that this result may also apply to other oral hypoglycemic drugs in these categories, in view of the close similarities in mode of action and chemical structure among the drugs in each category.

(Drug) should be used in preference to insulin only in patients with maturity-onset diabetes whose symptoms or blood glucose level cannot be controlled by diet alone and only when the advantages in the individual patient justify the potential risk; see INDICATIONS. The patient should be informed of the advantages and potential risks of (drug) and of alternative modes of therapy and should participate in the decision to use this drug.

(Drug) is not effective in patients with juvenile diabetes or insulin-dependent diabetes at any age. Such patients should be treated with insulin. The concomitant long term use of insulin and (drug) in an individual patient is, in view of the potential risk of increased cardiovascular mortality with (drug), less safe on a benefit-risk basis than the use of insulin alone.

The effectiveness of any oral hypoglycemic drug, including (drug), in lowering blood glucose to a desired level decreases in a large number of patients as the drug is administered over a period of months or years, in part because the patient's blood glucose tends to rise over time and in part because of diminished responsiveness to the drug. This phenomenon is known as secondary failure to distinguish it from primary failure in which the drug is ineffective in an individual patient at the time of its initial administration. See DOSAGE AND ADMINISTRATION.

Renal or hepatic insufficiency may cause elevated blood levels of (drug) and increase the risk of serious hypoglycemic reactions.

Pregnancy: (Data and interpretation related to reproduction and teratology studies to be supplied by manufacturer).

Prolonged severe hypoglycemia (4 to 10 days) has been reported in neonates born to mothers who were receiving a sulfonylurea drug at the time of delivery. Neonatal hypoglycemia has been reported more frequently following use of the longer-acting agents. If (drug) is used during pregnancy, it should be discontinued (time period to be supplied by manufacturer) before the expected delivery date.

Precautions

Hypoglycemia: All sulfonylurea drugs are capable of producing severe hypoglycemia. Particularly susceptible are elderly patients, patients with impaired hepatic or renal function, patients who are debilitated or malnourished, and patients with adrenal or pituitary insufficiency. Hypoglycemia is more likely to occur when caloric intake is deficient, after severe or prolonged exercise, or when more than one glucose-lowering drug is used.

(To be inserted for chlorpropamide only:) Because of the long half-life of chlorpropamide, patients who become hypoglycemic during therapy require careful supervision of the dose for at least 3 to 5 days, during which time frequent feedings are essential. It may be necessary to hospitalize such patients and give intravenous glucose.

Certain drugs may potentiate the hypoglycemic action of (drug), including phenylbutazone, oxyphenbutazone, salicylates, sulfonamides, chloramphenicol, probenecid, coumarins, monoamine oxidase inhibitors, and beta-adrenergic blocking agents. See ACTIONS. When such drugs are administered to a patient receiving (drug), the patient should be observed closely for hypoglycemia.

Loss of Control of Blood Sugar: When a patient stabilized on any diabetic regimen is exposed to stress such as fever, trauma, infection, or surgery, a loss of control may occur. At such times it may be necessary to discontinue (drug) and administer insulin.

Certain drugs tend to produce hyperglycemia and may lead to loss of control. These drugs include the thiazides and other oral diuretics, corticosteriods, and (to be supplied by manufacturer). When such drugs are administered to a patient receiving (drug), the patient should be carefully observed for loss of control.

Pseudo-albuminuria (tolbutamide only). Urine containing a tolbutamide metabolite may give a false positive reaction for albumin if the acidification-after-boiling test is used, because this procedure causes the metabolite to precipitate as flocculent particles. Use of the sulfosalicylic acid test circumvents this problem.

Adverse Reactions

Hypoglycemia. See PRECAUTIONS.

Gastrointestinal Reactions. Cholestatic jaundice may occur rarely; (drug) should be discontinued if this occurs.

Gastrointestinal disturbances, e.g., nausea, epigastric fullness, and heartburn are the most common reactions, occurring in (manufacturer to supply estimate of incidence). They tend to be dose related and may disappear when dosage is reduced.

Dermatologic reactions. Allergic skin reactions, e.g., pruritus, erythema, urticaria, and morbilliform or maculopapular eruptions occur (manufacturer to provide estimate of incidence). These may be transient and may disappear despite continued use of (drug); if skin reactions persist, the drug should be discontinued.

Porphyria cutanea tarda and photosensitivity reactions have been reported.

Hematologic Reactions. Leukopenia, agranulocytosis, thrombocytopenia, hemolytic anemia, aplastic anemia, and pancytopenia have been reported.

Metabolic Reactions. Hepatic porphyria, disulfiram-like reactions (manufacturer to supply further details).

(To be inserted for chlorpropamide only:)

Endocrine Reactions. On rare occasions (drug) has caused a reaction identical to the syndrome of inappropriate antidiuretic hormone (ADH) secretion. The features of this syndrome result from excessive water retention and include hyponatremia, low serum osmolality, and high urine osmolality.

Dosage and Administration

There is no fixed dosage regimen for the management of diabetes mellitus with (drug) or any other agent. In addition to the usual monitoring of urinary glucose, the patient's blood glucose must also be monitored periodically:

a. To determine the minimum drug dosage that will lower the blood glucose adequately.

b. To detect primary failure, i.e., inadequate lowering of blood glucose when the drug is first used, even though dose has been raised to the maximum level recommended; and

c. To detect secondary failure, i.e., loss of adequate blood-glucose-lowering response after an initial period of effectiveness. (Drug) should be discontinued, with careful monitoring of blood glucose at least annually to be certain that (drug) is continuing to lower the blood glucose.

Short term administration of (drug) may be sufficient during periods of transient loss of control.

(Manufacturer to supply the following details of dosage for each sulfonylurea:

1. Usual starting dose.
2. Maximum dose.
3. Dose beyond which a response is usually not seen if patient has not already had some response.
4. Usual maintenance dose.
5. Dosage interval, with reasons, e.g., avoid GI tolerance, short half-life of drug, etc.
6. Caution regarding dosage in elderly.)

How Supplied

(To be supplied by manufacturer.)

(c) Labeling for oral hypoglycemic drugs of the biguanide category shall be as follows:

Description

(Trade name, established name) is an oral blood-glucose-lowering drug of the biguanide category. It is a white, crystalline, water-soluble compound, formulated as (to be supplied by firm) for oral administration. (Manufacturer to add structural formula and other appropriate information.)

Actions

The mechanism of action of phenformin is not established but its ability to cause increased peripheral glucose uptake in vitro appears to be related to its inhibition of cellular oxidative processes. It does not stimulate insulin production. Many patients who at first demonstrate an adequate glucose-lowering effect with (drug) subsequently prove to be no longer satisfactorily responsive, i.e., secondary failure may occur.

(Manufacturer to supply information about:

1. Absorption.
2. Metabolism and excretion.
3. Plasma half-life and the effect of hepatic or renal impairment on blood levels, metabolism, and excretion.
4. Peak and duration of glucose-lowering effect.
5. Mechanism of drug interaction with agents that impair or potentiate drug effect.)

Indications

Identical to sulfonylurea label, except for substitution of the following section relating to concomitant therapy:

Concomitant Therapy. Phenformin may be used in conjunction with a sulfonylurea to control symptoms due to hyperglycemia in patients with maturity-onset nonketotic diabetes mellitus whose symptoms cannot be controlled by diet and maximum recommended doses of either drug alone and in whom insulin cannot be used for any of the reasons cited above.

In considering the use of concomitant therapy, it should be noted that both phenformin and a sulfonylurea drug (tolbmutamide) have been reported to be associated with increased cardiovascular mortality; see WARNINGS. Thus the use of phenformin in association with a sulfonylurea may carry a greater risk than the use of phenformin alone.

If a judgment is made that phenformin and a sulfonylurea are to be used together in a particular patient, it should be established that the patient is responsive to both drugs. This may be accomplished either by a trial of each drug separately or by adding the second drug and then tapering the dosage of the first, observing for diminished control of blood glucose. Once the need for both drugs is established, the desired control of blood sugar may be obtained by adjusting the dose of either drug. The possibility of hypoglycemia should be anticipated, and appropriate precautions taken. See package insert for the appropriate sulfonylurea for

CONTRAINDICATIONS, WARNINGS, PRECAUTIONS, ADVERSE REACTIONS, and DOSAGE AND ADMINISTRATION.

CONTRAINDICATIONS

(Drug) is contraindicated in patients with:

1. Known hypersensitivity or allergy to the drug.
2. A history of lactic acidosis.
3. Disease states associated with hypoxemia including cardiovascular collapse and acute myocardial infarction.
4. Severe renal disease.
5. Alcoholism.
6. Diabetic ketoacidosis with or without coma. Such patients should be treated with insulin.

WARNINGS

SPECIAL WARNING ON CARDIOVASCULAR MORTALITY

(Identical to boxed, boldface sulfonylurea labeling.)

(Drug) is not adequate therapy in patients with juvenile diabetes or insulin-dependent diabetes at any age. Such patients should be treated with diet and insulin. The concomitant long term use of insulin and (drug) in an individual patient is, in view of the risk of increased cardiovascular mortality with (drug), less safe on a benefit-risk basis than the use of insulin alone.

The effectiveness of any oral hypoglycemic drug, including (drug), in lowering blood glucose to a desired level decreases in a large number of patients as the drug is administered over a period of months or years, in part because the patient's blood glucose tends to rise over time and in part because of diminished responsiveness to the drug. This phenomenon is known as secondary failure, to distinguish it from primary failure in which the drug is ineffective in an individual patient at the time of its initial administration. See DOSAGE AND ADMINISTRATION.

Lactic Acidosis: There have been numerous reports of lactic acidosis in patients receiving phenformin. Lactic acidosis is an often fatal metabolic acidosis characterized by elevated blood lactate levels, an increased lactate-to-pyruvate ratio, and decreased blood pH. Azotemia ranging from mild to severe is present in most of the reported cases of lactic acidosis. Azotemia can result from dehydration, and some patients developing lactic acidosis associated with azotemia have had normal serum creatinine levels when properly hydrated. The following specific precautions should be observed when administering phenformin:

a. Impairment of renal function increases the risk of lactic acidosis. Renal function tests, such as serum creatinine, should be performed prior to phenformin therapy and at least annually thereafter. Phenformin should not be used in patients with impaired renal function, e.g., serum creatinine over 1.5 milligrams/100 milliliters, except in extraordinary circumstances.

b. Cardiovascular collapse (shock), congestive heart failure, acute myocardial infarction and other conditions characterized by hypoxemia have been associated with lactic acidosis and also may cause prerenal azotemia. Use of phenformin in patients particularly prone to develop such conditions must be carefully considered and the risks weighed against possible benefits. When such events occur in patients on phenformin therapy, the drug should be discontinued promptly.

c. Gastrointestinal disturbances are the most common adverse reactions to phenformin therapy. These symptoms must be distinguished from the symptoms of developing lactic acidosis. Anorexia and mild nausea are common side effects of phenformin, particularly upon initiation of therapy. Nausea, vomiting, malaise, or abdominal pain may herald the onset of lactic acidosis. The patient should be instructed to notify the physician immediately at the onset of any of these gastrointestinal symptoms or of hyperventilation. Phenformin should be withdrawn until the situation is clarified by determination of serum electrolytes and ketones, blood glucose, and, if indicated, blood pH, lactate, and pyruvate levels.

d. Lactic acidosis has a significant mortality and, when suspected, must be treated promptly by discontinuing phenformin and giving bicarbonate infusions and other appropriate therapy even before the results of lactate determinations are available. Lactic acidosis should be suspected in any diabetic patient with metabolic acidosis in the absence of ketonuria and ketonemia, uremia, and methanol or salicylate poisoning.

e. The physician should use special caution after initiating phenformin therapy, after increasing the drug dosage, and in circumstances that may cause dehydration leading to impaired renal function.

f. Alcohol is known to potentiate the effect of phenformin in elevating blood lactate levels, and patients should be warned against excessive alcoholic intake while receiving phenformin.

g. Impaired hepatic function has been associated with some cases of lactic acidosis. Particular caution must be observed when administering (drug) to patients with hepatic disease.

Pregnancy: (Data and interpretation related to reproduction and teratology studies to be supplied by manufacturer).

PRECAUTIONS

Hypoglycemia: Hypoglycemia is unusual in patients receiving (drug) alone, but may occur when caloric intake is deficient, when strenuous exercise is not compensated by caloric supplementation, or when more than one hypoglycemic drug is used.

(Manufacturer to supply paragraph on potentiating drugs.)

Loss of Control of Blood Sugar: Identical to sulfonylurea labeling.

Change in Clinical Status of Previously Controlled Diabetic: A diabetic patient previously well-controlled on phenformin who develops laboratory abnormalities or clinical illness (especially vague and poorly defined illness) should be evaluated promptly for evidence of ketoacidosis or lactic acidosis. Evaluation should include serum electrolytes and ketones, blood glucose, and, if indicated, blood pH, lactate, and pyruvate levels. Acidosis of either form necessitates withdrawing phenformin and initiating other appropriate corrective measures.

Starvation Ketosis: This must be differentiated from insulin-deficient ketosis and is characterized by ketonuria with little or no glucosuria and relatively normal blood glucose levels. This may result from excessive dosage of phenformin or insufficient carbohydrate intake.

ADVERSE REACTIONS

Hypoglycemia: See PRECAUTIONS.

Gastrointestinal Reactions: Gastrointestinal disturbances such as anorexia, nausea, vomiting, and diarrhea are the most common adverse reactions (manufacturer to supply frequency) and are dose related. These symptoms must be distinguished from the prodromata of lactic acidosis. See WARNINGS section for discussion of lactic acidosis. They may also cause dehydration and prerenal azotemia, which require discontinuation of the drug until renal function is again normal. Phenformin should be discontinued if vomiting occurs. An unpleasant metallic taste is a warning signal of impending gastrointestinal disturbances.

Dermatologic Reactions: (Manufacturer to supply data, including estimate fo incidence.)

Miscellaneous Reactions: Fatigue and weakness. Anorexia, nausea, and vomiting may occur in association with the intake of alcohol.

DOSAGE AND ADMINISTRATION

There is no fixed dosage regimen for the management of diabetic mellitus with (drug) or any other agent. In addition to the usual monitoring of urinary glucose, the patient's blood glucose must also be monitored periodically:

a. To determine the minimum drug dosage that will lower the blood glucose adequately.

b. To detect primary failure, i.e., inadequate lowering of the blood glucose when the drug is first used, even though dose has been raised to the maximum level recommended.

c. To detect secondary failure, i.e., loss of adequate blood-glucose-lowering response after an initial period of effectiveness. Drug should be discontinued with careful monitoring of blood glucose at least annually to be certain that (drug) is continuing to lower the blood glucose.

Short term administration of (drug) may be sufficient during periods of transient loss of control.

(Manufacturer to supply the following details of dosage:

1. Usual starting dose.
2. Maximum dose.
3. Dose beyond which a response is usually not seen if patient has not already had some response.
4. Usual maintenance dose.
5. Dosage interval, with reasons, e.g., avoid GI intolerance, short half-life of drug, etc.
6. Caution regarding dosage in elderly.)

HOW SUPPLIED

(To be supplied by manufacturer.)

(d) Each holder of an approved new drug application for an oral hypoglycemic agent shall submit a supplement to his application under the provisions of § 314.8(d) of this chapter to provide for labeling as described in paragraphs (b) and (c) of this section. The labeling in such supplement shall be identical in wording to the labeling in paragraphs (b) or (c) of this section where precise wording is specified, shall provide information on each of the points where wording is delegated to the manufacturer, and shall contain no additional or extraneous information. Such supplement shall be submitted within 10 days after (effective date of the final regulation). Any oral hypoglycemic drug with labeling not in compliance with this section and shipped into interstate commerce after (60 days after effective date of the final regulation) shall be subject to regulatory action.

Interested persons may, on or before September 5, 1975, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments regarding this proposal. Comments shall be filed in quintuplicate and shall be identified with the Hearing Clerk docket number found in the document heading. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: July 1, 1975.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.75–17530 Filed 7–3–75;8:45 am]

federal register

MONDAY, JULY 7, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 130

PART V

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary

■

CLAIMS

Collection and Settlement

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R–75–341]

PART 17—ADMINISTRATIVE CLAIMS

Subpart B—Collection of Claims by the Government Under the Federal Claims Collection Act of 1966

The regulations of the Department of Housing and Urban Development relating to the collection of claims under the authority of the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et seq., are hereby amended to reflect organizational changes which have occurred within the Department since their publication in the FEDERAL REGISTER, and to reflect a transfer of functions from the General Counsel to the Assistant Secretary for Administration. These amendments involve agency organization and management, do not require public comment and procedure, and therefore are effective upon publication. Accordingly, 24 CFR Part 17, Subpart B is amended as follows:

A. Section 17.20(b), is revised to read:

§ 17.20 Scope; definitions.

* * * * *

(b) *Definitions.* For purposes of this subpart, "office" means the organization of each Assistant Secretary; the Federal ment National Mortgage Association; the Insurance Administration; the Govern-Community Development Corporation; the New Communities Administration; the Federal Disaster Assistance Administration; the Office of Interstate Land Sales Registration and each Regional, Area, and Insuring Office of the Department.

B. Section 17.23 is revised to read as follows:

§ 17.23 Authority of offices to attempt; collection of claims.

The head of each office shall designate a claims collection officer, who shall attempt to collect in full all claims of the Department for money or property arising out of the activities of such office. Each claims collection officer shall establish and currently maintain a file with regard to each claim for which collection activities are undertaken.

§ 17.24 [Amended]

C. Section 17.24, and the title thereof, are amended by deleting "General Counsel" wherever the words appear, and substituting "Assistant Secretary for Administration" therefor.

D. Section 17.26 is revised to read as follows:

§ 17.26 Department claims officer.

The Assistant Secretary for Administration shall designate a subordinate official as Department Claims Officer, who shall be responsible for the establishment and maintenance of procedures within the Department relating to the collection of claims and the co-ordination of all collection activities in all Department offices.

§§ 17.27, 17.28, 17.30, 17.31, 17.33 [Amended]

E. Sections 17.27, 17.28, 17.30, 17.31, and 17.33, Claims Files, Monthly report of collection action, Record retention, Suspension or revocation of eligibility, and Standards for compromise of claims, respectively, are amended by deleting "General Counsel wherever the words appear and substituting "Assistant Secretary for Administration" therefor.

§ 17.31 [Amended]

F. Section 17.31, Suspension or revocation of eligibility, is further amended by deleting "Director, Office of Investigation" and substituting "Inspector General" therefor.

(Sec. 7(d) Dept. of HUD Act, 42 U.S.C. 3535 (d); Sec. 3 Federal Claims Collection Act of 1966, 31 U.S.C. 952)

Effective date. These amendments shall be effective upon July 7, 1975.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.75–17536 Filed 7–3–75;8:45 am]

Title 32—National Defense

CHAPTER XVII—OFFICE OF EMERGENCY PREPAREDNESS

PART 1712—FEDERAL DISASTER ASSISTANCE—SETTLEMENT OF CLAIMS

Revocation of Part

Executive Orders 11725 (38 FR 17175, June 29, 1973) and 11795 (39 FR 25939, July 11, 1975), transferred certain powers of the President under the Disaster Relief Act of 1970 (42 U.S.C. 4401, et seq.) and the Disaster Relief Act of 1974 (42 U.S.C. 5121n, et seq.) to the Secretary of Housing and Urban Development. Included in the transferred powers were those which had been delegated to the Office of Emergency Preparedness or the Director thereof.

The Director of the Office of Emergency Preparedness promulgated the rules in 32 CFR Part 1712 relating to the collection of claims by the Office of Emergency Preparedness in connection with Federal Disaster Assistance. With the transfer of the Office of Emergency Preparedness' functions to the Secretary of Housing and Urban Development, and the creation within HUD of the Federal Disaster Assistance Administration to carry out the disaster assistance functions of the Secretary, the regulations in 32 CFR Part 1712 are no longer necessary as the Federal Disaster Assistance Administration's claims collection activities are now conducted pursuant to the Department's claims collection regulations in 24 CFR Part 17, Subpart B. Accordingly, 32 CFR Part 1712 is hereby revoked.

This amendment involves agency organization and management, does not require public comment and procedure, and therefore is effective July 7, 1975.

(Sec. 7(d) Dept. of HUD Act, 42 U.S.C. 3535 (d); Sec. 3 Federal Claims Collection Act of 1966, 31 U.S.C. 952).

Effective date. This amendment shall be effective upon July 7, 1975.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.75–17551 Filed 7–3–75;8:45 am]